

1 IN THE UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF MISSOURI  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, )  
5 )  
6 Plaintiff,) )  
7 vs. ) Case No. 07-00093-01-CR-W-ODS  
8 )  
9 RINGLING DAN COHN, ) Monday, October 6, 2008  
10 ) Kansas City, Missouri  
11 Defendant.)

12  
13 TRANSCRIPT OF SENTENCING HEARING  
14 BEFORE THE HONORABLE ORTRIE D. SMITH  
15 UNITED STATES DISTRICT JUDGE  
16

17 APPEARANCES:

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THE COURT: Please be seated.

United States versus Ringling Dan Cohn. The case number is 07-93-01. Mike Warner appears for the United States. John O'Connor appearing with Mr. Cohn.

We are here this morning for sentencing. The parties have reviewed the presentence report and there are, there were originally a number of objections to the presentence report, including the government's position that Mr. Cohn violated portions of the plea agreement which under Paragraph 19 of the plea agreement would void the plea agreement in its entirety.

I understand from my conversation with counsel prior to entering the courtroom this morning that the defendant wishes to withdraw the objections to the presentence report except those related to the report's conclusion that he obstructed justice by falsely representing his medical condition to the Court and by falsely representing his financial condition to the Court.

If I conclude that Mr. Cohn has violated the plea agreement then the plea agreement would be void including that provision which sets the amount of loss at a number between 120,000 and 200,000. And would leave open the issue of the amount of loss which, obviously, also impacts the sentencing guidelines.

Have I accurately stated the status of the case at

1 the moment, Mr. O'Connor?

2 MR. O'CONNOR: Yes, Judge. And for the record we  
3 withdraw the other objections made. And I want to put on the  
4 record the reasons that we're doing that, if that's okay.

5 THE COURT: Sure.

6 MR. O'CONNOR: Basically, Judge, we entered into a  
7 plea agreement in this case where both parties were going to  
8 recommend at sentencing today a 34-month sentence to the Court.  
9 And at that time the Court had all the information available to  
10 it, all the arguments of the government and myself on behalf of  
11 Mr. Cohn and this was --

12 THE COURT: In the interest of completeness,  
13 Mr. O'Connor, I had your arguments. I did not have the  
14 presentence report.

15 MR. O'CONNOR: That's correct, Judge. I'm sorry.

16 And at the time of sentencing the Court indicated,  
17 obviously, the sentence would still be up to the Court, if the  
18 34 months was appropriate, but I believe the Court normally in  
19 these cases listens to the lawyers and agreements they make  
20 because I think the Court believes the lawyers know more about  
21 the case than the Court in most instances. And not saying what  
22 the Court would have ultimately done, but that was a sentence  
23 that was going to be anticipated here today.

24 In the interim there have been two issues that the  
25 Court has just defined that has now changed that dynamic. And

1 the government has taken a position that the plea agreement is  
2 now void. So that's why we're withdrawing the objections we  
3 made previously, other than to address these two issues which I  
4 think will ultimately drive the Court's decision in this case.  
5 And we would have evidence to support our position on that  
6 matter when the Court wants us to.

7 THE COURT: And, Mr. Warner, do you want to add to  
8 the record?

9 MR. WARNER: Yes, Your Honor. The only thing I would  
10 add is that in the plea agreement which was executed in March  
11 between the parties, Paragraph 19 expressly includes the  
12 language in the opening sentence, if the defendant commits any  
13 crimes, comma, violates any conditions of release. I would  
14 indicate, as we're all aware, and I'm referring to the docket  
15 entry of this case, the Docket No. 45 indicates an entry on  
16 April 25th of '08 that the Magistrate Court, Judge Larsen,  
17 found that this defendant violated his conditions of release  
18 and his bond was revoked. There is also a transcript of that  
19 bond hearing which is Document No. 46 for the record, and also  
20 an order revoking that bond as Document 47. I ask the Court to  
21 take judicial notice of these docket entries.

22 THE COURT: The Court will take judicial notice of  
23 its Docket Entries 45 and 46.

24 Mr. Warner, I believe that its your burden to  
25 establish by the preponderance of the evidence the facts that

1 you believe justify withdrawal of the 3-level reduction for  
2 acceptance and the 2-level enhancement for obstruction.

3 Further, it would be your obligation to establish the  
4 amount of loss.

5 If you're ready to proceed, I'll be happy to hear  
6 from you.

7 MR. WARNER: Susan Richart, the probation officer.

8 Your Honor, I would ask any defense witnesses, we  
9 would invoke the witness rule at this time.

10 THE COURT: All right. The rule excluding witnesses  
11 has been invoked and anyone expected to testify will be asked  
12 to leave the room.

13 SUSAN RICHART, GOVERNMENT'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. WARNER:

16 Q Would you state your name and tell us your occupation,  
17 please?

18 A Susan Richart, Senior United States Probation Officer.

19 Q And it's correct, you're the officer assigned to prepare  
20 the presentence investigation report for this defendant,  
21 Ringling Dan Cohn?

22 A Yes.

23 Q And just for the record, you completed your preliminary  
24 report on May 21st of this year and your final report was  
25 completed on August 25th of this year, is that correct?

1 A That sounds accurate.

2 Q All right. And do you have a copy of your report up  
3 there?

4 A Not with me.

5 Q Would it help you to have a copy?

6 A Yes, please.

7 Q On the table?

8 A It's in the file.

9 MR. WARNER: May I approach, Your Honor?

10 THE COURT: Sure.

11 BY MR. WARNER:

12 Q Now, in your final report on Page 13, Paragraph 56, you  
13 assessed a two-level additional offense level adjustment for  
14 obstruction of justice, is that correct?

15 A Yes, it is.

16 Q And based on your preliminary investigation in this case,  
17 what two incidents did you base that adjustment on?

18 A The failure to report assets that Mr. Cohn had access to  
19 from a civil suit and the failure to accurately report his  
20 medical condition to the magistrate judge.

21 Q Okay. And did you summarize both of those things  
22 factually in your final report on Page 12 in Paragraphs 44  
23 through 46?

24 A Yes, that's right.

25 Q And concerning specifically Paragraph 44 of your final

1 report, your request for financial information, can you  
2 describe when in time you first communicated to Mr. Cohn the  
3 need for you to receive this information?

4 A Yes, I can. I met with Mr. Cohn on March 19th to do the  
5 presentence interview and provided him with all the financial  
6 documents. I requested that he return those to me no later  
7 than March 26th.

8 Q And did you provide instructions to him orally or  
9 verbally?

10 A Yes. And I asked him or I instructed him to call me if he  
11 needed assistance with the forms or questions on the forms.

12 Q And if you could, if you recall, and let me jump around a  
13 little bit. But you've done this many times, is that correct?

14 A Yes.

15 Q How many times would you say, approximately? I know you  
16 can't give me an exact answer but how many times have you  
17 communicated to defendants about the need to provide you full  
18 disclosure of their financial situation?

19 A Well over a hundred times.

20 Q Okay. And how complete and clear do you believe you were  
21 when you communicated this need to Mr. Cohn?

22 A I believe I was complete and clear.

23 Q And did he express any misunderstanding or confusion when  
24 you talked to him? And this was face to face, correct?

25 A Yes, it was.



1 Q Did he have any confusion about anything you asked of him?

2 A He didn't seem to.

3 Q And did you have anything in writing that you also  
4 provided Mr. Cohn?

5 A Just the financial forms with the instructions.

6 Q And that had instructions as well?

7 A Yes.

8 Q Were those instructions on the form read to him?

9 A No, I did not read them to him.

10 Q And if you will --

11 May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. WARNER:

14 Q I'm going to hand you what has been marked as Government's  
15 Exhibit No. 1 and ask if you recognize that exhibit?

16 A Yes.

17 Q Just to simplify matters, is that the net worth statement  
18 including not only the statement that Mr. Cohn eventually  
19 filled out but also the instruction sheet for the net worth  
20 statement?

21 A Yes. It involves his monthly cash flow statements.

22 MR. WARNER: For purposes of the proceeding, Your  
23 Honor, I would move to admit Government's Exhibit No. 1.

24 MR. O'CONNOR: No objection.

25 THE COURT: Government's Exhibit 1 is admitted.

1 MR. WARNER: May I approach, Judge?

2 THE COURT: You may.

3 BY MR. WARNER:

4 Q Now, did you also provide this form to Mr. Cohn on  
5 March 19th of '08?

6 A Yes. That's when I gave him the first, that's probably  
7 not the set of forms but, yes, I gave him that set of forms on  
8 March 19th.

9 Q And when did you tell him to complete them and return them  
10 to you?

11 A By March 26th.

12 Q Okay. And is a week period of time a typical turn around  
13 period?

14 A It is, yes.

15 Q And did you receive the information back by March 26th of  
16 '08?

17 A No.

18 Q Did you hear any explanation or reason for the failure to  
19 return from Mr. Cohn?

20 A No.

21 Q Or his attorneys?

22 A No.

23 Q And when was the next time any communication occurred  
24 concerning his obligation to return the forms?

25 A I went to his house on April 9th to ask him if he needed

1 assistance with the forms and to pick them up.

2 Q And did you meet directly with Mr. Cohn?

3 A Yes.

4 Q And by the way when you saw him that day, describe his  
5 appearance?

6 A He was wearing sweatpants and a T-shirt. It appeared  
7 maybe he'd been watching T.V. and relaxing at home.

8 Q Was he ambulatory? Today he's in a wheelchair. Was he in  
9 a wheelchair then?

10 A No.

11 Q Was he up and about?

12 A Yes.

13 Q Did you, when looking at him did he appear to be in any  
14 discomfort or pain or could you tell?

15 A It was hard to tell. He didn't move quickly but he didn't  
16 use a cane.

17 Q And he was upright when he spoke to you?

18 A I met him at the door. Then we went into his living room  
19 and he sat down on the couch when we were talking about the  
20 financial forms.

21 Q Now, in this time period from March 19th of '08 until  
22 April 9th of '08, had either Mr. Cohn or any of his various  
23 attorneys contacted you concerning the financial statement?

24 A No.

25 Q Okay. And what did you say in response to, well, it's in

1 the mail?

2 A I said that I would wait a couple days for it to arrive at  
3 my office and that was it.

4 Q So if you saw him on April 9th of '08 and apparently was a  
5 Wednesday. He said he mailed it on April 7th of '08, which is  
6 a Monday. When you came back to the office on April 9th did  
7 you have it in the mail?

8 A No.

9 Q Did you have it any day thereafter?

10 A No.

11 Q Okay. And why is this information important to you in a  
12 fraud case for which you're preparing a presentence report?

13 A It's important because restitution was involved. And it  
14 helps the government after sentencing to determine where the  
15 assets are located and how restitution can be made.

16 Q And, ultimately, those decisions, the sentencing  
17 decisions, restitution decisions are made by the Court,  
18 correct?

19 A Yes.

20 Q And what next occurred, if anything, in regards to  
21 Mr. Cohn and his failure to return this information back to  
22 you?

23 A I called his attorney on April 14th and asked if they  
24 could help with Mr. Cohn's financial statement.

25 Q And what attorney did you speak with?

1 A I left a message with John O'Connor and PJ called me back  
2 two days later.

3 Q And what, if anything, did PJ O'Connor say to you?

4 A He said he would make sure we got the financial forms.

5 Q That was on April 14th?

6 A No. It was April 16 when I spoke to PJ.

7 Q Okay. And you had left a message with the O'Connor Law  
8 Firm on April 14th?

9 A Right.

10 Q That's correct?

11 A Uh-huh.

12 Q And what was the next communication or information, if  
13 any, concerning the financial statement?

14 A Shortly after I spoke to PJ, Mr. Cohn called and said he  
15 believed the financial forms had probably been blown away in  
16 the wind when he left them in the mailbox. And if I could send  
17 him a new set, he would complete them and send them right back.

18 Q At that time did he make any statement about his financial  
19 situation to you, just spuriously?

20 A Not at that time, no.

21 Q Did he say anything about having assets?

22 A Not at that time. We didn't talk about his assets on that  
23 day.

24 Q Okay. And did you then send a second set of financial  
25 statement documents to Mr. Cohn?

1 A Yes, I did.

2 Q And those went out on April 16th of '08?

3 A I believe either the 16th or early the 17th.

4 Q Did Mr. Cohn ever state to you, when he called you and  
5 said the old ones had blown away in the wind, how he was going  
6 to bring the new ones back?

7 A I don't recall if he said. I think he said he was going  
8 to bring them in to me, personally, soon as he got them.

9 Q And in the April '08 time period, what did you learn in  
10 your position as probation officer concerning the alleged  
11 compliance of Mr. Cohn and his pretrial release conditions?

12 A Some time in that time period I learned that he had been  
13 outside of his residence for other than medical treatment. I  
14 don't supervise his bond so I wasn't completely clear on how  
15 important that was. But evidently he was only to get medical  
16 treatment when he was leaving his home.

17 Q Did you become aware that an actual bond revocation  
18 hearing was set in front of Judge Larsen on the date of  
19 April 25, '08?

20 A Yes.

21 Q And did you actually attend that hearing?

22 A Yes, I did.

23 Q And hear the entirety of the evidence that was presented.

24 A Yes.

25 Q And that day prior to the hearing what did you receive

1 back regarding Mr. Cohn's case and your presentence report?

2 A That day, just prior to the hearing, the pretrial officer  
3 provided me with his, Mr. Cohn's financial statement.

4 Q And is that the exhibit that we marked today as  
5 Government's Exhibit 1?

6 A Yes.

7 Q And that's the information that you received from  
8 Mr. Cohn. And how did you actually get it?

9 A A pretrial services officer brought it to me.

10 Q It wasn't turned in to you, personally?

11 A No.

12 Q All right. And I guess we could probably try to figure  
13 this out and no need to do it for exact days but how late was  
14 the submission of the financial information to you?

15 A It was well over a month late.

16 Q And when you looked at and reviewed the net worth  
17 statement, how useful was the information provided to you in  
18 your investigation and ultimate report?

19 A Well, I use that for his financial section. My financial  
20 section is based upon this. I also obtained some of his  
21 bankruptcy records and credit bureau report but this is the  
22 bulk of the financial section.

23 Q Now, during the hearing, the bond revocation hearing on  
24 April 25th, did you learn in the course of that hearing and  
25 hearing the evidence about some bank account or bank accounts

1 that the defendant had access to?

2 A Yes, I did.

3 Q And did you then, after hearing that evidence, look to see  
4 if that bank account information had been communicated on the  
5 net worth statement?

6 A Yes.

7 Q And had it been?

8 A No.

9 Q Okay. And if I could direct your attention to the first  
10 page, the instructions of Exhibit 1 and kind of jump down 1, 2,  
11 3, 4, 5 sentences there. There are a lot of references to the  
12 statutes that sound pretty legalistic but, I guess they should,  
13 but to kind of cut in the middle there, it says to clarify that  
14 the assets owned, jointly owned, or controlled by defendant.  
15 And for your purposes when you say jointly owned, what do you  
16 interpret that to mean?

17 A We interpret it as any assets the defendant may have  
18 access to or benefit of now or in the future.

19 Q Okay. And jumping down, there is a little bit more  
20 language along those lines, assets or debts that are jointly  
21 held by you and a spouse or significant other, assets or debts  
22 that are held by a spouse or significant other. I guess what  
23 is the purpose for your report writing and requesting  
24 information concerning net worth statement of asking about  
25 these other people?



1 A It's not uncommon in financial cases for a defendant to  
2 transfer or reassign assets in order to avoid a restitution  
3 order. The government can assess assets belonging to a  
4 defendant in a criminal case. It's important that we're aware  
5 of all the assets the defendant has access to for restitution  
6 purposes.

7 Q And did you at least when you spoke with the defendant in  
8 person orally communicate this to him to the best of your  
9 recollection?

10 A At the initial meeting I said, you need to report all  
11 assets you have access to but that was the initial meeting. We  
12 didn't speak about it after that.

13 Q Okay. Now, in the course of you attending the bond  
14 revocation hearing and learning about another bank account that  
15 he had access to, reportedly or allegedly, I guess not  
16 allegedly but actually in the name of his putative  
17 step-daughter, Lakesha McLaughlin. Did, at any time either in  
18 Exhibit 1 or to you orally or through his attorneys, did  
19 Mr. Cohn ever talk to you about him receiving a civil  
20 settlement in the approximate amount of \$140,000?

21 A He had mentioned in the initial interview there was a  
22 civil settlement. But never any mention of amounts or accounts  
23 or anything of that sort.

24 Q And did he report that at all on Exhibit 1?

25 A No.

1 Q And did he ever tell you what happened to that civil  
2 settlement?

3 A No.

4 Q Would knowing about that civil settlement, particularly in  
5 light of attending the bond revocation hearing on April 25th of  
6 '08, have been important to you for purposes of your  
7 presentence report?

8 A Yes.

9 Q Can you explain why?

10 A It's a significant amount of money. Important to have  
11 full information for the presentence report. It's a document  
12 the Court uses in sentencing. My job is to make sure I have  
13 all the information I can, as accurately as possible.

14 Q And given your position and experience, would you have  
15 considered a civil settlement award granted to the defendant in  
16 his name, say in late 2007, checks written out in his name but  
17 the check is actually turned over to a significant other and  
18 deposited in the significant other's name in a bank, would you  
19 consider that still to be relevant information for purposes of  
20 a net worth statement?

21 A Yes.

22 Q Again, sorry. But can you explain why?

23 A Because Mr. Cohn had access to those assets. He was able  
24 to enjoy the benefit of those assets while he was on bond. And  
25 clearly he would have when he was finished with his sentence as

1 well.

2 Q And you were aware that during the bond hearing there was  
3 evidence presented that the defendant actually just drove up,  
4 and apparently without any discomfort, reached out and  
5 conducted an ATM transaction and withdrew \$500 from that  
6 account?

7 A That's my understanding, yes.

8 Q Okay. And how did you feel about the omission, I guess  
9 let me express this a little bit better. For purposes of your  
10 presentence report and assessing whether or not the defendant  
11 earned acceptance of responsibility and or may have obstructed,  
12 how did you assess in this case the defendant's failure to  
13 report this civil judgment?

14 A I felt that that would be, qualify as obstruction of  
15 justice for failing to provide full information to the  
16 probation office under the guidelines. And, generally, if  
17 obstruction of justice enhancement is applied, acceptance of  
18 responsibility is not granted.

19 Q Okay. And is that also stated in your presentence report,  
20 Paragraph No. 44, Page 12, the very last sentence, the  
21 defendant did not fully report his assets?

22 A Yes.

23 Q Did the defendant at any time during the time that you had  
24 communication with him make any reference to his financial  
25 situation or his financial status or assets?

1 A He said he had no assets. He had no money.

2 Q He had no money. Had no assets?

3 A Right.

4 Q How many times did he say that to you? Do you recall?

5 A He said it in the initial interview. I think he did say  
6 that when I went to see him at his residence. He was upset  
7 that I wanted the financial information. He said he didn't  
8 have anything.

9 Q Did you feel, based on your interactions with the  
10 defendant, your prior experience working these types of cases  
11 and requesting financial information from people, did you sense  
12 as a matter of your own opinion the defendant was recalcitrant  
13 about providing information?

14 A I felt that way.

15 Q Okay. And what accounted for that other than what you  
16 just said?

17 A He just wasn't cooperative. Generally, uncooperative when  
18 it came to the financial information.

19 Q Okay. Now, you, obviously, are aware that there was a  
20 plea agreement entered in this case and a plea that occurred in  
21 March of '08. And it's the government's contention that that  
22 plea agreement has been voided. But for purposes of your  
23 presentence report, you did calculate a total loss figure for  
24 the Court, is that correct?

25 A Yes, I did.

1 Q And if we could reference that, you could tell me a page?

2 A It's Page 13, Paragraph 52.

3 Q Thank you. You indicated a 14-level increase due to a  
4 loss of approximately \$640,820.28 cents. Can you describe to  
5 the Court how you calculated that loss amount?

6 A With, I had several meetings with the FBI agent and,  
7 specifically, the detective who investigated this case. And  
8 she provided me documentation regarding the loss figures.

9 Q Okay. And those loss figures are essentially derived from  
10 the alleged taking of money by Mr. Cohn from Griffith Coombs'  
11 bank accounts, is that correct?

12 A That's correct.

13 Q Various banks and bank accounts?

14 A Yes.

15 Q Was there discussion as well with the FBI about at least  
16 the government's perceived ability to prove the entirety of the  
17 loss?

18 A Yes.

19 Q Okay. And did the government discuss with you, including  
20 myself, I suppose, some of the limitations we might confront if  
21 we proceeded to trial?

22 A Yes.

23 Q Concerning Paragraph 56 on Page 13 as well, you were  
24 basing the adjustment for obstruction of justice, am I correct,  
25 and let me clarify. I may be incorrect. Not only on the

1 alleged failure to report substantial assets to the probation  
2 office but also based on his revocation of bond?

3 A Yes, you are correct. It's a separate incident.

4 Q Is that also true for the adjustment for acceptance of  
5 responsibility?

6 A Yes.

7 Q So you aren't just basing either of those adjustments just  
8 on the failure to report financial assets?

9 A No.

10 Q But you're including as well Judge Larsen's order revoking  
11 bond from April of '08?

12 A Right. Judge Larsen found that he provided materially  
13 false information to the Court and that's a big part of it.

14 Q Okay. And is it correct as well that at least from the  
15 original objections that were filed by the defense attorneys in  
16 this case, the loss amount in your PSR was not objected to?

17 A No, it was not.

18 Q Apparently as we limited the scope of the objections that  
19 loss amount is still not objected to?

20 A No, it is not.

21 Q Okay. That's all I have. Thank you.

22 THE COURT: All right. Mr. O'Connor.

23 MR. O'CONNOR: Thank you, Your Honor.

24 CROSS-EXAMINATION

25

1 BY MR. O'CONNOR:

2 Q What exhibit number was that?

3 A One.

4 Q One. So that's this. So we're referring to the same  
5 thing?

6 A Yes.

7 Q Okay. Thank you.

8 So as it relates to the adjustment for obstruction of  
9 justice, the substantial assets that we're really referring to  
10 here is the civil settlement. Is that a fair statement?

11 A Yes, sir.

12 Q Okay. And as it relates to the civil settlement, when did  
13 you become aware that there were substantial assets that would  
14 have belied what was put in the report of net worth by my  
15 client?

16 A I believe I learned about it just prior to the bond  
17 revocation hearing the end of April.

18 Q Okay. So that would have been before you got the  
19 completion of the net worth?

20 A Right. I believe it was. I don't think I had my first  
21 report. That's accurate.

22 Q Okay. And I'm assuming that for purposes of a presentence  
23 report, wherever you find out the information regarding assets  
24 a defendant may have, whether it's from the defendant, from the  
25 defense lawyer or from the prosecutor, that's something that

1 you take into consideration and make that information available  
2 to the Court in the report, is that correct?

3 A Correct.

4 Q So when you got this report, even though the report says  
5 no assets when you go through all of the information, you were  
6 aware that there were assets and I'm assuming you were made  
7 aware of that by the government?

8 A Well, I got this report just about the same time I learned  
9 about the assets.

10 Q From the government?

11 A Right.

12 Q So nothing had been hidden from you in terms of what you  
13 knew. The government had already told you about that. In  
14 fact, this settlement had happened long ago. I don't know if  
15 you're aware but both parties knew of the settlement and what  
16 had happened with the settlement. Were you aware of that?

17 A Yes, I was aware of that. When I found out about the  
18 civil settlement bank account, it was still being investigated.

19 Q So this isn't a situation where a person filled out a form  
20 then you found out later that they had misled you. You had the  
21 information before you even had the report he had?

22 A I'm sorry?

23 Q You had the information before he gave you this report of  
24 net worth?

25 A No. I found out -- this all happened at the same time at



1 the bond revocation hearing.

2 Q If I remember this, you can correct me, the bond  
3 revocation hearing is when my client was in custody. We had  
4 gotten, I don't know where we got it, from his family, he had  
5 filled it out. I brought it to the hearing. I think I gave it  
6 to a pretrial officer who gave it to you?

7 A Uh-huh.

8 Q Does that sound about right?

9 A I got it from a pretrial officer, yes.

10 Q I think that's the same day he was back before Judge  
11 Larsen on the revocation?

12 A Yes.

13 Q That's the same day that you found out about the civil  
14 settlement?

15 A Right.

16 Q Okay. And then as relates to the second part of your  
17 obstruction argument is that he provided materially false  
18 information to the magistrate. Can you articulate in your best  
19 words what you believe he materially false, what materially  
20 false information he gave the magistrate that led you to ask  
21 the Court for a two-level obstruction?

22 A Used the wording from the report the Magistrate Judge  
23 Larsen filed with the Court in that he provided intentionally  
24 false information regarding his medical condition.

25 Q And I think you said that you did not read this to him and

1 didn't know whether he read the instructions so to speak?

2 A I did not read it to him. I offered to help him if he had  
3 questions.

4 Q And in terms of your report for the court, is there, tell  
5 me why you assess that information is used in your estimation  
6 for the Court?

7 A My job is to get all the information I can get regarding a  
8 defendant and a case and provide it to the Court.

9 Q And I'm assuming because of the role, the adjustment of  
10 the obstruction of justice that you requested, that goes hand  
11 in hand with your request that acceptance of responsibility not  
12 be given. It's kind of those both, for both of those reasons  
13 we get to no acceptance of responsibility?

14 A Exactly.

15 Q Now, when you were at his house on that one occasion, can  
16 you say with certainty that he did walk or did not walk without  
17 a cane or do you remember?

18 A He did not walk with a cane. I remember that. He didn't  
19 have a cane.

20 Q He did walk slowly you said?

21 A I believe he did. I don't think he was moving too quickly  
22 but there is a flight of stairs from his door to the living  
23 room which he managed to get up.

24 MR. O'CONNOR: One second, Your Honor.

25 That's all I have. Thank you very much.

1 THE COURT: Mr. Warner?

2 MR. WARNER: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WARNER:

5 Q Ms. Richart, concerning the civil settlement, you knew the  
6 government had known there had been a civil settlement, right?

7 A Right.

8 Q And were you also aware that both the FBI and the  
9 government didn't know where that money went?

10 A Right. That was my understanding.

11 Q And that we were waiting for the net financial statement  
12 or net worth statement to reveal that?

13 A Yes.

14 Q And is it correct that, in fact, our understanding,  
15 meaning probation and the government's understanding of the  
16 location of the civil settlement money was congruent with the  
17 bond revocation proceedings and investigation leading up to  
18 that?

19 A Yes.

20 Q Thank you.

21 THE COURT: Recross?

22 MR. O'CONNOR: No further questions. Thank you.

23 THE COURT: Thank you, Ms. Richart. You may step  
24 down.

25 (Witness excused.)

1 THE COURT: Mr. Warner?

2 MR. WARNER: Call Detective Panuco, Your Honor.

3 DEBBIE PANUCO, GOVERNMENT'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. WARNER:

6 Q Can you state your name and tell us your occupation,  
7 please?

8 A Debbie Panuco. I'm a detective with the Kansas City,  
9 Missouri Police Department.

10 Q And what unit with the police department are you assigned  
11 to?

12 A I'm currently assigned to the Intelligence Unit. However  
13 I was assigned to Financial Investigations at the time of this  
14 offense.

15 Q And you are, if you will, the case agent or the case  
16 detective assigned to the entirety of the investigation  
17 concerning the defendant, Mr. Cohn?

18 A I am.

19 Q And are you familiar with the entirety of the  
20 investigation and all of the reports and other information  
21 that's been generated in this case?

22 A I am.

23 Q And you also testified with other officers at the  
24 defendant's bond revocation hearing on April 25th of this year,  
25 is that correct?

1 A I did.

2 Q And did you and other officers also do some investigation  
3 at least leading up to Mr. Cohn's revocation on that date?

4 A We did.

5 Q And did that investigation involve surveilling Mr. Cohn as  
6 was represented in evidence at that hearing of his trip to  
7 Sam's Club or Home Depot, some place like that?

8 A Yes, we did.

9 Q Now, during that same surveillance activity, Mr. Cohn was  
10 observed, I believe by you and others, to access an ATM and  
11 receive money?

12 A He did.

13 Q And where was that ATM at?

14 A It was located at the U.S. Bank on Ward Parkway.

15 Q Okay. And did you actually see Mr. Cohn conduct that  
16 transaction?

17 A I did not. Another surveillance team member did.

18 Q Okay. What did that person report?

19 A That he had, obviously, he pulled up to the ATM machine.  
20 Entered the access or pin code into an account and removed  
21 money from the ATM.

22 Q And did you later determine what that amount was?

23 A We did. I believe it was \$500 that day. I'd have to  
24 refer to my report.

25 Q Now, prior to this time had you been actively

1 investigating, in conjunction with the probation office, an  
2 attempt to try to ascertain Mr. Cohn's financial assets, money  
3 holdings?

4 A I had.

5 Q And was that to assist not only the government for  
6 purposes of a potential restitution hearing but also to provide  
7 information to the probation office?

8 A Yes, that's true.

9 Q And were you aware that the defendant had been involved in  
10 2007 in civil litigation with the Nelson Art Gallery?

11 A Yes, that's accurate.

12 Q Did that litigation in a nut shell surround the situation  
13 he had with the deceased Griffith Coombs and many of the  
14 antiques and properties and items that Mr. Coombs had  
15 possessed?

16 A It did.

17 Q And did you learn of a settlement amount from that civil  
18 suit?

19 A I did.

20 Q And what was that amount?

21 A \$300,000.

22 Q Okay. Did you at any time prior to April of '08 ascertain  
23 what amount, if any, Mr. Cohn received?

24 A I didn't know the exact amount at that time. We didn't  
25 believe that, initially, that he had received any money.

1 Q Okay. And what were you waiting on to see if his access  
2 or possession of any civil settlement money existed?

3 A We didn't know which bank it was located at.

4 Q And what was he to turn over to the probation officer that  
5 might have assisted you in figuring out whether or not he had  
6 possession or access to any of that money?

7 A Any financial information regarding any accounts that he  
8 held, either in his name or in a person's name that he had  
9 access to.

10 Q Okay. Did you, prior to April of '08, attempt to locate  
11 bank accounts that he might have had or might have placed a  
12 civil judgment in?

13 A I have.

14 Q Were you successful in locating any such assets in his  
15 name?

16 A Not until the day of the surveillance, no.

17 Q Now, after you saw the defendant accessing the ATM at that  
18 particular bank, describe if you will or summarize your  
19 investigation of that bank and the accounts therein that the  
20 defendant apparently had access to?

21 A I served a subpoena on U.S. Bank and they provided  
22 information in regard to a, according to the location, date and  
23 time of the transaction, they were able to identify the  
24 accounts that the money was withdrawn from.

25 Q Okay. And did you then further investigate the account or

1 accounts that Mr. Cohn apparently accessed and ascertain the  
2 history of the accounts ,when they were opened and how, that  
3 sort of thing?

4 A I was.

5 Q And can you describe what you discovered, please?

6 A If I can refer to my report for exact dates.

7 Q Okay.

8 A That there was a checking account that was originally  
9 opened on August 27th of 2007 in the name of Lakesha  
10 McLaughlin, who I knew to be Mr. Cohn's girlfriend's daughter.  
11 Then on August 31st of 2007 there was an investment money  
12 market account that was opened also in her name.

13 Q Okay. Can you describe from your investigation how those  
14 accounts were opened?

15 A The initial checking account was opened with a \$500  
16 deposit, based on a check issued to Lakesha McLaughlin from  
17 Michael Waldeck.

18 Q Who do you know Mr. Waldeck to be?

19 A He was the civil attorney representing Mr. Cohn on the  
20 civil suits.

21 Q What account activity did you see after that?

22 A In the initial checking account, the deposit, there was  
23 not any additional activity of note. However the investment  
24 account that was opened on August 31st was opened with monies  
25 transferred from a \$140,000 check issued to Lakesha McLaughlin,



1 put in the checking account and transferred into the money  
2 market account.

3 Q Did you get copies of those checks?

4 A I did.

5 Q And what was noted on the front of the check? The  
6 \$140,000, that was made out to Lakesha McLaughlin?

7 A Again, if I could refer to the copy of the check. I  
8 believe it says, civil litigation.

9 Q It says what?

10 A I believe it says civil settlement or civil litigation.

11 Q How about Cohn settlement?

12 A Okay. That's accurate.

13 Q Who actually wrote the check to Lakesha McLaughlin?

14 A It was signed by Michael Waldeck.

15 Q And so Michael Waldeck writes a check in the amount of  
16 \$140,000 to Lakesha McLaughlin with a memo notation of Cohn  
17 settlement. Did I get that right?

18 A That's correct.

19 Q And so not to complicate things because I have trouble  
20 handling more than one account myself. But there are two  
21 accounts, a money market account and a checking account, is  
22 that correct?

23 A Yes, that's correct.

24 Q All right. And the date, approximately in time, these  
25 accounts are opened is when?

1 A The checking account, August 27th of '07, and the money  
2 market account, August 31st of '07.

3 Q Now, at this time Mr. Cohn is, has already been charged  
4 and was charged in March of '07, is that correct?

5 A That's accurate.

6 Q And he was detained and in custody, is that correct?

7 A Yes.

8 Q All right. And was there any information provided to the  
9 bank about Lakesha McLaughlin, her approximate age, employment?

10 A She provided identification at the time the account was  
11 opened.

12 Q Okay. And how old is Ms. McLaughlin?

13 A She was born in 1979.

14 Q Okay. And she's the daughter of the mother, Patricia  
15 Foreman, is that correct?

16 A That's correct.

17 Q And Patricia Foreman is the long time, I guess, putative  
18 spouse, although not legally married, of Mr. Cohn, is that  
19 correct?

20 A That's accurate, yes.

21 Q From your investigation throughout the entirety of this  
22 case, did Ms. McLaughlin assist Ms. Foreman, Mr. Cohn when they  
23 all had the company of Griffith Coombs?

24 A She did.

25 Q Okay. And what employment did Ms. McLaughlin represent

1 for herself when she opened up this account?

2 A She stated that she worked for a company called, Whole  
3 Person.

4 Q Is that a home care business?

5 A It is.

6 Q And who is her client?

7 A During the time that she actually worked there it was her  
8 mother.

9 Q Patricia Foreman?

10 A Yes.

11 Q And if you know, what happened to that employment?

12 A She hasn't worked, she hasn't shown any employment there  
13 since the fourth quarter of last year.

14 Q And Patricia McLaughlin was actually convicted last week  
15 in this building for fraud?

16 A She was.

17 MR. O'CONNOR: Objection.

18 THE COURT: Overruled.

19 MR. WARNER: Okay.

20 BY MR. WARNER:

21 Q Who was, regarding the bank accounts here, the  
22 beneficiary? The bank accounts that were opened under Lakesha  
23 McLaughlin's name, who was her beneficiary?

24 A Patricia Foreman.

25 Q And from talking with bank officials and reviewing their

1 own opening notes, what was anticipated or who was anticipated  
2 to be added to the accounts in the future per either  
3 Ms. McLaughlin and/or Mr. Waldeck?

4 A She referred to her stepfather.

5 Q Okay. And based on your knowledge of the case and the  
6 individuals involved, who did you infer that to mean?

7 A Dan Cohn.

8 Q Now, other than surveilling Mr. Cohn in April of '08, how,  
9 if at all, could you have learned of this account?

10 A I could not have unless he had provided the information on  
11 the form provided to him by the probation office.

12 Q Now, at least from then till now, a little over a year,  
13 can you summarize the activity of this account? Essentially,  
14 what has happened with the nearly \$140,000 from August of '07  
15 until nearly today?

16 A I can. It was set up that there would be a \$5,000  
17 transfer of funds from the investment account into the checking  
18 account. What subsequently occurred was that there were often  
19 times much more than that transferred, again, from the  
20 investment account into the checking account. Often times as  
21 much as \$10,000 a month.

22 As of June of this year, there was a \$50,000 transfer  
23 from the investment account into the checking account. The  
24 funds were used for a variety of things, fast food restaurants,  
25 grocery stores. Appears there were probably gas purchases.

1 Liquor store. Lot of clothing, jewelry that was purchased with  
2 the funds. There was a membership for Direct Buy of Kansas  
3 City that was purchased out of that money.

4 Q And how much money would you say has been expended,  
5 approximately, from this civil settlement in the last twelve  
6 months?

7 A Well, as of September 11th which was the last date that I  
8 had on the statements, in the money market account itself there  
9 was \$4,209.15 left. As of the same date in the checking  
10 account the balance remains of \$46,038 and 38 cents.

11 Q So roughly 90,000, a hundred thousand?

12 A Yes.

13 Q And are you aware of any employment either for Ms. Foreman  
14 or Ms. McLaughlin throughout the year 2008, latter part of  
15 2007?

16 A No. They did not show any employment at all.

17 Q And is it your understanding that the house that they live  
18 in at 1486 East 76th Terrace in Kansas City, Missouri, was that  
19 also the house Mr. Cohn was staying in?

20 A It is.

21 Q And that's where he was residing when he was free on bond,  
22 briefly?

23 A Yes, he was.

24 Q That house is paid for, is that correct?

25 A Yes, it is, as part of the civil settlement.

1 Q And there is also a Chrysler 300, 2006?

2 A Yes.

3 Q Car there.

4 A Yes.

5 Q Whose name is that car in?

6 A It was, the last time I checked, in Ringling Cohn's name.

7 Q Is that paid for?

8 A It is. They paid cash for the car.

9 Q Do you recall how much it cost to purchase that car?

10 A \$35,199.

11 Q And that was purchased in '06, is that correct?

12 A Yes, it was.

13 Q Now, once you received all of this bank account  
14 information, you, obviously, turned that over to me and also  
15 probation?

16 A Yes, I did.

17 Q And why did you feel this information was relevant to  
18 probation?

19 A Because I knew that part of the sentencing was based on  
20 it. Also there would be restitution required and those were  
21 funds that were available to him for restitution.

22 Q And there's been some testimony that you heard from  
23 Ms. Richart concerning the total loss amount that is alleged in  
24 the presentence report and she referenced talking to the  
25 government and also you. And you're familiar with the loss

1 amount that is alleged in the presentence report or PSR?

2 A I am.

3 Q And the amount is in the neighborhood of \$640,000?

4 A Yes, that's correct.

5 Q Okay. Can you describe at least from your perspective as  
6 the primary investigator on this case how that amount was  
7 calculated?

8 A It was based on the fact that Mr. Cohn had total access to  
9 Mr. Coombs accounts starting, beginning in 2003. He was the  
10 one who had control over the checking account. He was, as a  
11 part of the trust agreement, he was the person who was paid  
12 into the checking account by the trust. And at any time that  
13 he requested additional funds, the bank often placed the funds  
14 into that account. He was the one who had access to be able to  
15 get to the funds. Mr. Coombs' health did not allow that.

16 Q And that loss figure, for lack of a better way of  
17 expressing it, was based on the government's and perhaps the  
18 police department's perspective of the entirety of the loss  
19 that we believe Mr. Cohn had facilitated?

20 A That's correct.

21 Q Now, did you also discuss with me and I think briefly with  
22 probation and we discussed, in terms of both trial preparation  
23 and plea negotiation strategies, difficulties that might be  
24 encountered in proving that loss amount beyond a reasonable  
25 doubt?

1 A We did.

2 Q Okay. You know it remains to be seen if the plea  
3 agreement is void or not but we alleged a smaller amount in our  
4 plea agreement and you're aware of that, correct?

5 A Yes, that's accurate.

6 Q What was the basis for the lower amount for our purposes  
7 in attempt to facilitate a viable plea agreement?

8 A What we were able to prove beyond a reasonable doubt.

9 Q And those were primarily based on activities conducted by  
10 Mr. Cohn wherein he had forged and we had direct proof that he  
11 had forged Mr. Coombs' signature, i.e. received money without  
12 authority?

13 A That's correct.

14 Q Okay. Did you feel, however, if we had proceeded to trial  
15 that a reasonable inference, sufficient for purposes of proving  
16 our case beyond a reasonable doubt, would have supported a  
17 higher number, even the number that's in the PSR?

18 A I do.

19 Q And did you accept the difference for purposes of, at that  
20 time, negotiating a conclusion to this case?

21 A I did.

22 MR. WARNER: I think that's all the questions I have.

23 THE COURT: Mr. O'Connor?

24 MR. O'CONNOR: Thank you, Judge.

25 CROSS-EXAMINATION



1 BY MR. O'CONNOR:

2 Q As it relates to this account, Detective Panuco, even as  
3 of September 11th Mr. Cohn had not been added to the account, I  
4 guess, anticipated by some note in the file?

5 A He had not.

6 Q Okay. And was he a signature on the account or a  
7 beneficiary of the account as it sat as of September 11th?

8 A He was not.

9 Q And any of the checks that you have described that have  
10 gone out of that account, were any of those to the benefit of  
11 Mr. Cohn on the face, whether money left on the books, maybe,  
12 at a facility or anything like that?

13 A I don't know that.

14 Q In what you reviewed, did you see any such checks made out  
15 to a facility like a prison facility for purposes of his  
16 benefit?

17 A There are many notations in here in regard to a  
18 correctional facility, yes.

19 Q All right. Do you know what those amounts were?

20 A If I can refer to the documents I can tell you.

21 Q Okay.

22 A Here's one entry from February 25th that is noted for  
23 correctional bill for \$156.95. There is a variety of these  
24 throughout the statement.

25 Q Okay. And do you know whether those were for phone calls

1 or for just money on the books? Do you have any idea what the  
2 use was?

3 A I don't.

4 Q All right. As it relates to, you said that the only way  
5 you could have found out about these accounts was by his  
6 financial statement?

7 A It wouldn't have been the only way but it certainly would  
8 have been the easiest way.

9 Q Wouldn't it have been an easier way to call me or  
10 Mr. Waldeck or Mr. Warner to ask me or Mr. Waldeck in plea  
11 negotiations, we need those account numbers before we make a  
12 deal with you or I can't imagine we wouldn't have given them to  
13 you. The settlement was an open settlement. Everyone was  
14 aware of it. Is there any reason you can't call me or Waldeck  
15 and ask us the account numbers?

16 A I don't normally call you, Mr. O'Connor, but I could have,  
17 yes.

18 Q That's all I have.

19 THE COURT: Mr. Warner?

20 REDIRECT EXAMINATION

21 BY MR. WARNER:

22 Q I guess as a follow-up on that last question, Detective,  
23 whose responsibility is it any way? Is it yours or the  
24 defendant's to provide that information?

25 A It would be the defendant's responsibility to have

1 provided it.

2 Q Okay. Thank you.

3 THE COURT: Detective, who were the parties to the  
4 civil suit that was settled in 2007?

5 THE WITNESS: It was, the original civil suit,  
6 although I was not a party to it or had any participation in  
7 it, was originally started by the Nelson Art Gallery against  
8 the subject, Mr. Cohn. They contested the will of Mr. Coombs.  
9 I don't know who else was.

10 THE COURT: You don't know whether there were other  
11 defendants named?

12 THE WITNESS: The only other, there were no other  
13 defendants. No.

14 THE COURT: The original check that was used to open  
15 the checking account at U.S.B.?

16 THE WITNESS: Yes.

17 THE COURT: Was that a check drawn on the attorney's  
18 checking account?

19 THE WITNESS: The original \$500 check for the  
20 checking account, yes. It was drawn on the same account of  
21 Mr. Waldeck that the \$140,000 check was.

22 THE COURT: Both checks then were drawn on  
23 Mr. Waldeck's trust account?

24 THE WITNESS: They were drawn on an account in his  
25 name. I don't know whether or not that's his business account

1 or personal account.

2 THE COURT: Do you have copies of those checks?

3 THE WITNESS: I do.

4 THE COURT: Would you look, please, and tell me  
5 whether the check was drawn on the trust account or his  
6 business account?

7 THE WITNESS: It does not say trust account on it. I  
8 have copies for you if you would like to see them, sir.

9 THE COURT: We'll mark those as exhibits, please.

10 MR. WARNER: May I approach, Judge?

11 THE COURT: Yes, of course.

12 MR. WARNER: For the record, Your Honor, I've handed  
13 Detective Panuco Government's Exhibit 2.

14 BY MR. WARNER:

15 Q And can you describe what's provided there in the various  
16 pages?

17 A I can. It is the signature cards of Lakesha McLaughlin  
18 for the accounts, copy of her non driver's ID card. Deposit  
19 tickets into the accounts for both the \$500 and the \$140,000.  
20 It also includes two checks, one dated August 27th of '07 in  
21 the amount of \$500 that was signed by Michael Waldeck. The  
22 second check was dated August 31st of '07, also drawn on the  
23 same account of Michael E. Waldeck on Country Club Bank. That  
24 is made out to Lakesha McLaughlin in the amount of \$140,000.  
25 Notation on the memo line is, Cohn settlement. It is also

1 signed Michael E. Waldeck, endorsed Lakesha McLaughlin, for  
2 deposit only.

3 MR. WARNER: Judge, I would move to admit  
4 Government's Exhibit No. 2.

5 MR. O'CONNOR: No objection.

6 THE COURT: Government's Exhibit 2 is admitted.

7 And Detective Panuco, did you attend the detention  
8 hearing following Mr. Cohn's plea of guilty in this case  
9 that --

10 THE WITNESS: I did.

11 THE COURT: -- that was conducted before Judge  
12 Larsen?

13 THE WITNESS: Yes.

14 THE COURT: Did you also attend the bond revocation  
15 hearing in April of this year?

16 THE WITNESS: I did, yes, sir.

17 THE COURT: Were there differences between what  
18 Mr. Cohn represented his physical condition to be at the  
19 detention hearing and what Judge Larsen found it to be at the  
20 bond revocation hearing?

21 THE WITNESS: There was.

22 THE COURT: What were those differences?

23 THE WITNESS: The representation initially by,  
24 through his attorney, was that he was having difficulty walking  
25 or he may have said, I would have to refer to the transcript

1     itself, whether or not he could walk at all. That was not what  
2     we observed the day of the surveillance.

3             THE COURT: What did you observe?

4             THE WITNESS: He walked from his house. And having  
5     been in the house, I knew that he would have to come down a  
6     flight of approximately ten stairs to the landing and out the  
7     side door. We observed him exit the side door of the  
8     residence, which acts as their front door. Again, down several  
9     more steps. He entered the driver's side of the vehicle, the  
10    Chrysler, with no difficulty. He was using a cane. He drove  
11    to the bank at that time, withdrew the money from the ATM, did  
12    not appear to have a problem turning to be able to access the  
13    ATM machine. Drove to Sam's Club in Grandview where he was  
14    observed getting out of the vehicle. Again, walking with a  
15    cane but not with difficulty. They spent, he and Patricia  
16    Foreman, spent some time in the business itself. He was  
17    observed bending over, picking up cases of items, putting them  
18    on the cart, in the cart, out of the cart. Again, when he  
19    exited, when they exited the business, the shopping cart,  
20    itself, was full of items that they had purchased. He walked  
21    the cart to the car. Opened the trunk. He was observed  
22    clearly bending over, picking up what I believe were cases of  
23    water off the bottom shelf of the shopping cart and putting  
24    them in the trunk.

25            THE COURT: Was that the only occasion Mr. Cohn was

1 observed away from home?

2 THE WITNESS: Yes. By me, yes.

3 THE COURT: Well, did your department or your unit  
4 conduct other investigation or surveillance as to his  
5 activities?

6 THE WITNESS: No.

7 THE COURT: Thank you.

8 Any follow-up questions, gentlemen?

9 MR. WARNER: No.

10 THE COURT: Thank you, detective.

11 MR. O'CONNOR: I did have one, briefly. I was going  
12 to let Mr. Warner go first.

13 RECROSS-EXAMINATION

14 BY MR. O'CONNOR:

15 Q Did you become aware at the second hearing that just in  
16 case this is an issue, I know it was with the Judge, that the  
17 pretrial officer had given permission, although he wasn't  
18 suppose to in light of the agreement, but did give him  
19 permission to go where you observed him to go?

20 A I did.

21 Q Thank you.

22 THE COURT: Thank you. You may step down.

23 (Witness excused.)

24 THE COURT: Mr. Warner?

25 MR. WARNER: No additional evidence, Your Honor.

1 THE COURT: Mr. O'Connor?

2 MR. O'CONNOR: Could we have a 5-minute break? One  
3 of my witnesses came just before we came back to see you.

4 THE COURT: We'll take a 5-minute recess.

5 We'll be in recess.

6 (Recess)

7 LAKESHA MCLAUGHLIN, DEFENDANT'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. O'CONNOR:

10 Q You can pull that down. There you go. Would you state  
11 your name, please?

12 A Lakesha McLaughlin.

13 Q And, Lakesha, your relationship with Dan Cohn?

14 A Daughter.

15 Q Okay. And you're not Dan's natural daughter, is that  
16 true?

17 A Yes.

18 Q You are not?

19 A That's true.

20 Q Okay. But you and your mother have lived with Dan, is  
21 that correct?

22 A Yes.

23 Q How long have you lived with Dan or have known Dan?

24 A Been knowing Dan over the years.

25 Q How many years?



1 A Approximately, I'd say probably 15 years, over.

2 Q And how old are you?

3 A I'm 29.

4 Q And what do you do?

5 A I'm a massage therapist.

6 THE COURT: I'm sorry. I didn't hear that answer.

7 THE WITNESS: Massage therapist.

8 BY MR. O'CONNOR:

9 Q Having lived with Dan, were you aware or are you aware of  
10 problems or issues he's had with his back?

11 A Yes.

12 Q Tell the Judge what you know about it. Has he had this  
13 back problem before he was ever charged with any criminal  
14 offense?

15 A Yes.

16 Q Tell the Judge what you knew or observed about that?

17 A Well, he had surgeries. I don't know exactly when. And  
18 throughout the years he always complained about his back issue.  
19 It always has bothered him while he walked, as far as I know.

20 Q After Dan was charged with the crime that he ended up  
21 pleading guilty to, he was put out on bond. Did you see him at  
22 home when he was out on bond?

23 A Yes.

24 Q And what was his condition with his back as you observed  
25 it, yourself, while he was out on bond?

1 A Well, I know he was having issues as far as in pain and  
2 less mobility, as far as walking. And he can bend to a certain  
3 extent.

4 Q Did he walk with any aids at all?

5 A Yes. He had a walker.

6 Q Okay. Did he also use a cane?

7 A Yes.

8 Q And did you try and help him any way therapy-wise to make  
9 his back better so he would feel better?

10 A Yes. I helped him exercise, range of motion, apply hot  
11 and cold packs. Had him to soak in Epsom salts.

12 Q How often did you do that while he was out on bond? In  
13 terms of 7 days a week, how many days would you try to help him  
14 with his back in 7 days?

15 A At least maybe 3 or 4 days out of 7 days.

16 Q And did those treatments seem to help him?

17 A Yes.

18 Q And can you describe for us the difference from when you  
19 gave him treatments than when you weren't giving him  
20 treatments, how his back reacted?

21 A Well, before the treatments, he had less mobility. I got  
22 the extension and, well, as far as bending and walking. And  
23 with the treatment, it helped him have more mobility. He still  
24 complained of pain, however, he did have more mobility while I  
25 was working with him and helping him exercise and stretch.

1 Q Now, at some point in time there was a civil settlement  
2 reached and there was a bank account that was opened up,  
3 Mr. Waldeck and you at a bank, is that true?

4 A Yes.

5 Q Tell the Judge what you understood about all that when it  
6 happened?

7 A Well, when we went to go set it up to open the account,  
8 the banker that we sat down with had shared with us that Dan  
9 cannot be on the account until he was able to get out, come in,  
10 personally, with ID so he could be on the account.

11 Q And the settlement was to Dan Cohn. It wasn't to you?

12 A Yes.

13 Q Okay. And so was the account then set up?

14 A Yes.

15 Q Okay. And did, as you call him your dad, Dan Cohn, he was  
16 in jail at the time, is that correct?

17 A Yes.

18 Q And I believe there was testimony there was a notation on  
19 what you filled out that at some point he would be added to the  
20 account?

21 A Yes.

22 Q Has he ever been added to the account?

23 A No.

24 Q And the signatures on the account, were you and your  
25 mother as beneficiary?

1 A Yes.

2 Q Okay. And was that done for any reason other than that's  
3 what the bank suggested?

4 A Yes.

5 Q That's all I have.

6 CROSS-EXAMINATION

7 BY MR. WARNER:

8 Q Now, ma'am, you characterized yourself as Mr. Cohn's  
9 daughter, is that correct?

10 A Yes.

11 Q And, again, Mr. O'Connor pointed this out. You're not  
12 necessarily his biological daughter but at least in your mind  
13 you perceive him as a stepfather or father figure?

14 A Yes.

15 Q So you've been close to Mr. Cohn for over 15 years since  
16 you were a teenager?

17 A Not exactly. We wasn't always close. However, once I got  
18 older and more mature, we was able to get along then. Have a  
19 better relationship, yes.

20 Q And certainly during those better times he's someone you  
21 trusted, is that a fair statement?

22 A Yes.

23 Q Someone you liked?

24 A Yes.

25 Q And someone you felt comfortable around, right? Is that

1 true?

2 A Yes.

3 Q And you were assisting him during the time that you all  
4 were caring for Mr. Coombs, is that correct?

5 A Yes.

6 Q And you actually earned some money doing that, didn't you?

7 A Yes.

8 Q How much did you earn?

9 A I couldn't tell you the amount.

10 Q You don't remember?

11 A I can't tell you the amount.

12 Q Okay. Were you paid a regular salary?

13 A I was paid a rate.

14 Q Did you ever get any gifts from Mr. Coombs, financial  
15 gifts?

16 A Yes.

17 Q How much?

18 A Don't remember.

19 Q Would you remember if you got one for like \$11,000?

20 A Yes.

21 Q And you got one of those, didn't you?

22 A Yes.

23 Q Okay. Well, that was a lot of money, wouldn't you agree?

24 A Yes.

25 Q And that came from Mr. Coombs' accounts that Mr. Cohn was

1 helping him with, right?

2 A If you want to put it like that.

3 Q Okay. So I mean you were in the picture, let's put it  
4 that way, during the time Mr. Coombs was in the house before he  
5 died and Mr. Cohn and your mother, Patricia Foreman, were  
6 keeping care of him?

7 A And myself, yes.

8 Q And yourself. All right. And during this time you  
9 indicated, too, that Mr. Cohn at least during the time that  
10 you've known him, has always complained about a frisky back,  
11 bad back?

12 A Yes.

13 Q He did, did he not though, in 2006 in the same period  
14 Mr. Coombs was still alive, buy a Hummer? Do you remember the  
15 Hummer?

16 A Yes, I remember the Hummer.

17 Q The big orange Hummer that said Bad to the Bone across the  
18 front?

19 A What does that have to do with his back?

20 Q Aren't Hummers, a guy like me needs a ladder to get into  
21 them. Now he was --

22 A Excuse me?

23 Q He was able to get in and out of that Hummer pretty well,  
24 wasn't he?

25 A Yes. He had it.

1 Q Just asking. And you say that you're a massage therapist?

2 A Yes.

3 Q And are you licensed?

4 A Yes, I am.

5 Q You're licensed in what states?

6 A In Kansas.

7 Q In Kansas?

8 A Yes.

9 Q Okay. Where did you go to school?

10 A High Tech Institute in Missouri.

11 Q High Tech?

12 A Institute, yes.

13 Q Where is that located?

14 A 9001 State Line, Kansas City, Missouri.

15 Q And when did you attend High Tech?

16 A I graduated in June '06 so I was there for 18 months.

17 Q You graduated, I'm sorry, when?

18 A June '06.

19 Q June of '06?

20 A And I was there for 18 months.

21 Q And have you ever been employed anywhere specifically as a  
22 massage therapist?

23 A Yes.

24 Q And where are those places?

25 A SS Massage.

1 Q Where is SS Massage located?

2 A It's located in Overland Park, Kansas, off 83rd.

3 Q And what period of time, approximately, did you work  
4 there?

5 A From June 13 of '08 currently.

6 Q And you still work there?

7 A Yes.

8 Q Now, did you attend the hearing in March of '08, earlier  
9 this year, when Mr. Cohn was released on bond?

10 A Yes.

11 Q Okay. And at that time Mr. Cohn was in a wheelchair  
12 similar to today?

13 A Yes.

14 Q And he represented, his attorneys represented to the Court  
15 that he was incapacitated and needed to get out on bond to get  
16 treatment. Do you remember that?

17 A Yes.

18 Q Okay. And was it your understanding from being there and  
19 being, obviously, an interested person in all of this, that  
20 Mr. Cohn was to get out on bond but be restricted to his house  
21 except for times that he went to get treatment. Did that sound  
22 like a fair statement from what you recall?

23 A No. I don't recall that exactly.

24 Q Do you know or do you recall any time during the time he  
25 was released on bond for a little bit over a month of Mr. Cohn



1 going to a doctor or hospital to get treatment for his back?

2 A No, he did not.

3 Q And throughout this time, you all were still residing at  
4 the house on East 76th Terrace, is that correct?

5 A Yes.

6 Q And you then provided him what you called home treatments?

7 A Yes.

8 Q Based on your massage expertise?

9 A Yes.

10 Q Okay. Now, going into the civil settlement, you have --  
11 your mother is Patricia Foreman, right?

12 A Yes.

13 Q You have another adult sister as well?

14 A Yes.

15 Q What is her name?

16 A LaShondra McLaughlin.

17 Q And did not LaShondra also assist you and Patricia Foreman  
18 and Mr. Cohn during the time you all were engaged in helping  
19 Mr. Coombs?

20 A Yes.

21 Q Okay.

22 A Off and on.

23 Q And how old is LaShondra?

24 A LaShondra is 27.

25 Q Okay. And she doesn't reside at that house on 76th

1 Terrace, is that correct?

2 A No, she does not.

3 Q Whose idea was it to set up the account in your name?

4 A You would have to ask his lawyers, Dan's lawyers.

5 Q Who approached you about doing it?

6 A You would have to ask Dan's lawyers.

7 Q I mean, let me ask it another way. Did the lawyers  
8 approach you?

9 A Yes.

10 Q Okay. And what, which lawyers?

11 A I don't remember which one at the time exactly.

12 Q We have Mr. O'Connor here today. I think you have seen  
13 out in the hallway Mr. Waldeck?

14 A Yes.

15 Q Either one of those?

16 A It could have been both. There's been so much going on.  
17 That's why my mind is kind of cloudy.

18 Q What was said to you by one or both of those lawyers?

19 A That, basically, what you had stated earlier just about  
20 the account.

21 Q Who wanted the account in your name?

22 A I plead the Fifth.

23 Q You plead the Fifth?

24 A Yes.

25 MR. O'CONNOR: I don't think -- I don't know why

1 that's being done, Your Honor. But I can tell the Court as an  
2 officer of the court, Mr. Waldeck, the settlement, I wasn't --  
3 and Mr. Waldeck will speak to it. But that's who spoke to her.  
4 We can get that issue resolved. I don't know why she would be  
5 doing that.

6 THE COURT: Mr. Warner?

7 MR. WARNER: I don't know, Your Honor. I don't know  
8 if it's a non-responsive answer or if the witness feels she has  
9 exposure.

10 MR. O'CONNOR: Judge, she's my witness. Do you mind  
11 if I speak with her?

12 THE COURT: I'll let you do it on re-direct when  
13 Mr. Warner finishes.

14 BY MR. WARNER:

15 Q Just to clarify, ma'am, you're taking the Fifth for the  
16 question that was asked, who wanted this account in your name?

17 A Yes.

18 Q Do you feel like you've done something wrong or?

19 A Not -- no, not at all. It's just that you're asking me  
20 the specific question when earlier you was asking me a question  
21 about the account. Therefore when you ask me the question  
22 about the account of who did I go to set up the account with,  
23 so therefore it's self-explanatory. Why would you have to ask  
24 me that question because that's not the issue that we're on  
25 right now. I mean not as far as you asking me the question but

1 as far as the issue in court today.

2 Q Well --

3 THE COURT: Ms. McLaughlin, you don't get to decide  
4 what questions are relevant and what questions are not.

5 THE WITNESS: I understand that.

6 THE COURT: The legitimate belief that your answer to  
7 a question might expose you to prosecution, that is a  
8 legitimate basis to take the Fifth Amendment. Merely objecting  
9 to the question is not. Do you understand?

10 THE WITNESS: I understand fully.

11 BY MR. WARNER:

12 Q And if I could inquire further. I mean, my question to  
13 you, ma'am --

14 A Uh-huh.

15 Q And it was, I'll try to state it again as directly as I  
16 can. My question was to you, originally, who wanted the  
17 account in your name?

18 A The lawyer.

19 Q Okay. And you indicated that you did not think doing that  
20 was any type of wrongdoing by you, right?

21 A Right.

22 Q Did the lawyers indicate that Mr. Cohn wanted the account  
23 in your name?

24 A No.

25 Q Okay. And this was money, obviously, from a civil

1 settlement in Mr. Cohn's name, right?

2 A Yes.

3 Q And you knew this money was money that had come out of the  
4 lawsuit he had been involved in?

5 A Yes.

6 Q Okay. So you get \$140,000. It's opened up in your name  
7 and there are actually two accounts, a checking account and  
8 money market account, right?

9 A It was in my name but it wasn't to me. It was to Dan but  
10 it was in my name, yes.

11 Q So you perceived that money as Dan's money?

12 A Yes.

13 Q And when he was out on bond, he had access to that money,  
14 did he not?

15 A No. It's in my name.

16 Q Well, I mean, you gave him an ATM card, apparently. I  
17 think you heard the testimony at the bond revocation hearing  
18 that he pulled out \$500 that day?

19 A I don't have anything to do with that.

20 Q Well, how would he be able to access that account if not  
21 through you?

22 A Well, my mother had the card so as far as me saying me,  
23 that I gave him a card, there is no proof.

24 Q So some how he was able to get access to that account?

25 A Like I said, I gave my mother the card.

1 Q All right. And tell us about what you or others, since  
2 that account is in your name and I'm sure you get financial  
3 bank statements and that sort of thing. How has that account  
4 progressed from the time it was opened until now?

5 A What do you mean by progressed?

6 Q Well, has that money just sat there or have there been  
7 withdrawals?

8 A No, it hasn't sat there. It's been used.

9 Q And how much has been withdrawn, approximately, from that  
10 account over the last year?

11 A I don't know.

12 Q You don't know. How much say per month?

13 A I don't know.

14 Q Who's withdrawing the money?

15 A We have it set up for our living, for bills.

16 Q And you don't work, well, you work right now?

17 A Yes.

18 Q And you started when?

19 A June 13th of '08.

20 Q Okay. You, and you didn't work any time from August of  
21 '07 until that time period, correct?

22 A I guess.

23 Q And your mother, Patricia Foreman, doesn't work either?

24 A No, she didn't.

25 Q Would it surprise you that bank account records reveal

1 that consistently, some times twice a month, almost \$10,000 is  
2 taken out of that account and transferred to the checking  
3 account?

4 A Can you state the question again?

5 Q Well, would it surprise you that the account history of  
6 the money that was opened up in your name indicates that  
7 there's been a consistent transfer of money from the money  
8 market account into the checking account upwards to \$10,000 a  
9 month? In fact, on June 16th of '08, \$50,000 was transferred  
10 into the checking account, right?

11 A No, I wouldn't be surprised.

12 Q Are you doing that?

13 A Yes.

14 Q Oh, you are doing it?

15 A Yes.

16 Q And over the summer was the kitchen remodeled at your  
17 house?

18 A No.

19 Q What was the \$50,000 for?

20 A For living.

21 Q For living?

22 A Yes.

23 Q And for you and your mom and you have two children, is  
24 that correct?

25 A I don't have any children.

1 Q You don't have any children? Okay. Pardon me. So your  
2 living expenses can be as much, because on June 13th of '08  
3 there was 5,000 transferred into the checking account and then  
4 on June 16th of '08, \$50,000 was transferred into the checking  
5 account. That's all for living expenses?

6 A Yes.

7 Q What kind?

8 A Bills.

9 Q Bills?

10 A Uh-huh. Everyday living.

11 Q Okay. Buy things like jewelry and items like that?

12 A Maybe.

13 Q Okay. And were you ever instructed or, you know, did you  
14 ever receive any communications either from Cohn directly to  
15 you or from Mr. Cohn to your mother to you about how to handle  
16 this money in these accounts?

17 A No.

18 Q At no time. So you and your mother have access to all  
19 this money and you're withdrawing it all the time and  
20 transferring it around and spending it, even though it belongs  
21 to Mr. Cohn?

22 A It benefited Mr. Cohn as well.

23 Q All right. In what way?

24 A The home and our living expenses.

25 Q I'm sorry?



1 A Our living expenses in the home.

2 Q Was any money sent to Mr. Cohn when he was in custody?

3 A Yes.

4 Q Okay. For what?

5 A For his living as well.

6 Q So Mr. Cohn, I mean you talked, you all talked regularly  
7 on the phone?

8 A He talked regularly with my mother on the phone.

9 Q And do you know, firsthand, whether or not he ever talked  
10 to your mother, then you heard about it from your mother, about  
11 the money in the accounts?

12 A Rephrase that again?

13 Q Well, I mean, Mr. Cohn is in custody. Look at it from his  
14 perspective. He's in custody. He's got 140,000 due and owing  
15 him. He entrusted it to his daughter and his significant  
16 other, wife. I mean, doesn't it seem reasonable from time to  
17 time he might be asking, hey, how's my money doing?

18 A Yes.

19 Q And did he do that?

20 A Yes.

21 Q Okay. And did he know that all of this money was being  
22 transferred out?

23 A Yes.

24 Q And did he approve of that?

25 A Yes.

1 Q Okay. And you spoke to him directly about that?

2 A Some times but mainly between him and my mother.

3 Q So he knew, Mr. Cohn did, that there was an account in  
4 your name?

5 A Excuse me?

6 Q Mr. Cohn, obviously, knew that there was an account with  
7 his money in your name?

8 A Yes.

9 Q Okay. That's all I have. Thank you.

10 THE COURT: Redirect?

11 MR. O'CONNOR: Just one brief.

12 REDIRECT EXAMINATION

13 BY MR. O'CONNOR:

14 Q Was a roof repaired with some of this money?

15 A Yes.

16 Q That's all I have.

17 THE COURT: Recross?

18 MR. WARNER: No. Thank you.

19 THE COURT: Just a moment.

20 Ms. McLaughlin, during the period of time when  
21 Mr. Cohn was out of custody, did he see a physician or doctor  
22 of any kind?

23 THE WITNESS: No, he did not.

24 THE COURT: Was he prescribed any medication of any  
25 kind by a physician or doctor?

1 THE WITNESS: Not that I can recall.

2 THE COURT: Did he receive any treatment for his back  
3 other than the cold and hot applications that you gave him and  
4 the exercises for mobility?

5 THE WITNESS: No. Just that. And maybe ibuprofen  
6 for the pain.

7 THE COURT: All right. Thank you, ma'am.

8 (Witness excused.)

9 THE COURT: Mr. O'Connor?

10 MICHAEL WALDECK, DEFENDANT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 THE COURT: Mr. Waldeck, you're becoming a regular  
13 witness in this courtroom.

14 THE WITNESS: Yes, sir. Nice to see you, Your Honor.

15 BY MR. O'CONNOR:

16 Q State your name for the Court, please?

17 A Michael Edward Waldeck.

18 Q What do you do for a living?

19 A I'm a trial lawyer.

20 Q How long have you been a trial lawyer?

21 A Forty-three years.

22 Q Do you know Dan Cohn?

23 A I do.

24 Q I want to first, we've got two issues we're dealing with.

25 I want to first address the issues as relates to Dan's back and

1 your knowledge of that before we get into the financial issues.

2 A Yes, sir.

3 Q When did you first start representing Dan Cohn or  
4 thereabouts?

5 A Approximately two years ago.

6 Q And before there was any criminal charges, is that  
7 correct?

8 A Yes, sir.

9 Q And in that representation of him what did you know at  
10 that time or even up to today as related issues he had with his  
11 back, any surgeries or any issues along that line?

12 A Well, he visited my office a number of times because we  
13 had probably a couple thousand documents. He was assisting me  
14 in categorizing the documents and looking at them. And just by  
15 way of general discussion he talked about problems in moving  
16 the transfer cases and boxes because of the back pain. And he  
17 and I had talked, since I had been a personal injury defense  
18 lawyer for years, of the symptoms of low back problems and pain  
19 radiating down his legs. I was aware from time to time he had  
20 bad days and others were okay.

21 Q At some time when he was charged with the criminal  
22 offense, did you have occasion to visit him while he was in  
23 custody?

24 A Yes, I did.

25 Q Where would that have been?

1 A Leavenworth.

2 Q Did you also see him down in Bates County?

3 A I saw him down in Bates County probably three or four  
4 times.

5 Q So how many times altogether would you say we have seen  
6 him in custody while these charges were pending?

7 A Approximately, a half dozen.

8 Q And I think on two of those occasions, three, I think I  
9 was with you twice in Bates, once in Leavenworth and you were  
10 three on your own, I guess?

11 A That's right.

12 Q And let's go with when you first observed him in Bates  
13 County, the first time you would have been alone. How was he  
14 brought to the room where you visited him? And tell the Judge  
15 how you best can describe how he appeared?

16 A Okay. He had the typical prisoner garb on. He walked in  
17 with a deputy. We talked a little bit. Since it was a small  
18 room where he could sit, he was seated the first time. And  
19 during that visit he seemed to be perfectly normal.

20 Q Okay. Did you visit him again?

21 A I visited him a second time because we were having some  
22 problems with discovery in the civil case. And at that time he  
23 was assisted by one of the deputies in the room. We cut short  
24 because he was uncomfortable. And I said I would get back with  
25 him when I needed some more information.

1 Q Then I think you and I went up there together. And tell  
2 the Judge, if you remember that occasion and how he was brought  
3 in the room to visit with us?

4 A Yeah, I do remember that occasion well, Your Honor.  
5 Because, once again, he was assisted in the room but we were  
6 having a pretty frank discussion about what information he had  
7 and why some things were missing. So it was a somewhat  
8 contentious discussion. I remember it for that reason.

9 Q When you visited him at Leavenworth and the times you  
10 visited him in jail, was he brought to the room in any  
11 different way than just walking into the room?

12 A Yes. He was in a wheelchair.

13 Q How many of the six occasions would he have been in the  
14 wheelchair to your knowledge?

15 A Two or maybe three.

16 Q And this issue as it relates to his back, is it your  
17 personal observation those are real issues or fake issues?

18 A Well, the movement that somebody has with low back pain,  
19 he's got a bulging disk, is something you can't continue to  
20 fake. You either have it or don't have it. And my opinion, as  
21 a layman, he clearly did have it.

22 Q Was it your opinion that when we made the request for him  
23 to get out on bail, that he needed medical treatment? Our  
24 belief from discussing with him and we believed he was going to  
25 get that medical treatment?

1 A We wouldn't have done it except for that. We thought it  
2 was of prime importance because he started having radiating  
3 pain down the leg as I recall in a bulging disk case.

4 Q Last time you visited Leavenworth when he was in the  
5 wheelchair, clearly trying to get up to get in the wheelchair,  
6 out of the wheelchair, seemed to be a monumental task as I  
7 remember?

8 A You and I talked to him and said, what can you do? He  
9 would get up to about three quarters position. So he was  
10 partially standing, partially sitting.

11 Q He basically said he couldn't do any more?

12 A He said he couldn't and that's what I observed.

13 Q Okay. Now, let's get to the settlement. Tell the Judge  
14 who the parties were in the settlement that was reached  
15 regarding the will contest?

16 A Yes, Your Honor. We initiated the suit on behalf of Dan  
17 Cohn. And he was moving as plaintiff against what is the  
18 Nelson Gallery and the Board of Directors of the Nelson Art  
19 Gallery.

20 Q At some point in time was there a settlement reached in  
21 that matter?

22 A There was. We were probably halfway through the  
23 depositions and we had taken most of the fact witnesses and it  
24 went quite well for us and they tendered us a settlement.

25 Q Is it fair to say you handled the civil part of this and I

1 handled the criminal part of this?

2 A We've had that discussion many times. You're the criminal  
3 lawyer. I'm the civil lawyer. And we know that, yes, sir.

4 Q As it relates to the civil settlement, at some point was  
5 there a settlement reached for Dan Cohn?

6 A There was.

7 Q How much was it?

8 A Total amount of settlement was \$300,000. He had  
9 obligations to me and also to pay you for the criminal part of  
10 it. But the idea of the settlement was that this was a  
11 settlement that was going to go to Dan and his family and his  
12 step-children that were in that house at East 78th Terrace.

13 Q And at some point in time did you get, have a check? I  
14 think there's something in evidence there. Did you have a firm  
15 check or a trust account check or check that you gave to the  
16 Cohn family?

17 A Yes. What we did was we ran the check through, which was  
18 an overall settlement check, payable to him and us as his  
19 attorneys through my trust account. And it was payable to  
20 Lakesha, was the check we took over to the bank at the time.  
21 But the settlement check, which I don't see here, was in the  
22 amount of 300,000. It resolved all the issues in the civil  
23 case.

24 Q And the amount that went to Mr. Cohn was what?

25 A \$150,000.



1 Q All right. And is there and the money was for Dan Cohn?  
2 No question about that?

3 A No. The money was for Dan Cohn. But we all understood it  
4 got settled on the basis of constructive benefit conveyed to,  
5 as a result of the settlement involved Lakesha, LaShondra, Pat  
6 his wife or common law wife, all four of them.

7 Q Was then there -- did you go to the bank with Lakesha and  
8 her mom to set up the account?

9 A Yes. Actually Lakesha and I were the only two that went.  
10 We went to U.S. Bank which is over there at 63rd Street by the  
11 old Landing.

12 Q The account, when it was opened up, there was a notation  
13 on the account that Dan would be added to the account at some  
14 time later, is that right?

15 A Yes. Because the bank regulations at U.S. Bank, and those  
16 I've seen generally in my practice, would not have permitted  
17 him to be on the account while he was incarcerated in jail for  
18 whatever reason, wouldn't be able to sign the account cards and  
19 present himself in the bank.

20 Q All right. So is there anything else about the settlement  
21 that is noteworthy?

22 A Well, I think what was noteworthy about the settlement, it  
23 was driven by the idea that the Nelson was very concerned about  
24 whether or not the allegations about Mr. Cohn were correct. I  
25 think we had satisfied them that they had real exposure and we

1 would win and could prove he had done nothing improper.

2 Q Was there any secret in your mind as to this money being  
3 put in this account? Is that information you would have shared  
4 with the government if they asked for account numbers or  
5 information where that account was? Was anything done to try  
6 to preclude the government or someone else from finding that  
7 money?

8 A We anticipated the Nelson would ask for a confidentiality  
9 agreement as they often do in these kinds of settlements. They  
10 didn't. So it was just a regular settlement. Could be  
11 discovered by anybody who had reasonable authority for it.

12 Q And if I would have asked you to disclose it to the  
13 government as it relates to where the money was and whose  
14 accounts, whose benefit, you would have shared that with me?  
15 You would have allowed me to share that with them?

16 A Certainly.

17 Q And you were aware of the plea negotiations I was involved  
18 in with them on a regular basis, is that correct?

19 A Yes, I was.

20 Q And we talked about that, is that right?

21 A Yes.

22 Q I think that's all I have.

23 THE COURT: Mr. Warner?

24 CROSS-EXAMINATION

25

1 BY MR. WARNER:

2 Q Mr. Waldeck, I don't think you know me. I might be the  
3 only lawyer here you don't know but --

4 A Nice to meet you, sir.

5 Q You, too. And you and Mr. O'Connor have worked together  
6 over the years, is that right?

7 A Yeah. For a long time. He's been in our office. Then we  
8 worked on things together even when we were separate.

9 Q As you indicated that you tend to handle the civil side of  
10 things and Mr. O'Connor handles the criminals?

11 A Exactly.

12 Q So you're kind of hand in glove but different sides of the  
13 docket so to speak, right?

14 A Yes.

15 Q Now, going first to this issue of Mr. Cohn's back. You  
16 indicated in your direct testimony that you had visited him  
17 many times, certainly probably from your work as a PI attorney,  
18 you're familiar with lower back injuries?

19 A I am, sir.

20 Q And whether or not people fake those or not, right?

21 A Yes, generally, I think so.

22 Q And at least your lay opinion was as you indicated that  
23 Mr. Cohn, at least in your mind, appeared to be in general need  
24 of treatment?

25 A Yes.

1 Q Did you know or were you aware both at Leavenworth CCA and  
2 in Bates County that Mr. Cohn had repeatedly refused treatment  
3 from the medical staff of those institutions?

4 A I'm not quarreling with you but what I understood was he  
5 refused because it was a general practitioner who did the  
6 examination which was the predicate for the treatment. I think  
7 both he and I were quite concerned that an orthopedic surgeon  
8 didn't see his back or would have made the proper diagnosis.

9 Q So it was your understanding, and I don't know if you were  
10 called upon to represent this to the Court, I don't think you  
11 did but Mr. O'Connor did, that if he were released, Mr. Cohn,  
12 the purpose of him getting released was definitely to get  
13 professional orthopedic physical care?

14 A Yes. That was part of the release. It certainly was.  
15 Yes, sir.

16 Q And you anticipated at least in your mind, medical  
17 treatment from, you just mentioned, an orthopedic?

18 A Well, what I --

19 Q Physician, correct?

20 A Excuse me?

21 Q I'm sorry?

22 A What I anticipated was at some point an orthopedic surgeon  
23 would be able to examine him. I think the examination was the  
24 key point rather than the treatment.

25 Q Okay. But you did anticipate a physician doing that?

1 A Yes, sir.

2 Q Okay. And you characterized Mr. Cohn as a plaintiff in  
3 the case with Nelson, is that correct?

4 A Yeah. He was one of the parties in the case. Yes, sir.

5 Q Actually this was a will or probate contest, is that  
6 correct?

7 A You know, I don't even do my own wills or estate planning.  
8 But really it was filed as a civil action in the Circuit Court  
9 on a pending probate. But the idea was whether or not there  
10 had been, what the effect was of the wills that were written at  
11 the time they were written.

12 Q Okay.

13 A So we did go to the probate court is all I'm trying to  
14 say, Mr. Warner.

15 Q You indicated the settlement was for \$300,000. Roughly  
16 half went to the lawyers and \$150,000 went to Mr. Cohn?

17 A That was it exactly, yes, sir.

18 Q And that money was to him, Mr. Cohn, correct. The check?

19 A The settlement was to Mr. Cohn for the benefit of the four  
20 people that I mentioned.

21 Q And so it was for the benefit of Mr. Cohn and his family,  
22 correct?

23 A Yeah. Those that were living in that house. Yes, sir.

24 Q And that was communicated to you by Mr. Cohn?

25 A Well, I began to know them all, had them there at the

1 office to interview them and everything else. I knew that one  
2 of the key components of our case would be to establish that we  
3 had a case that involved interested people beyond Dan Cohn. So  
4 that was part of my trial strategy. I wanted to be sure they  
5 were indicated.

6 Q And Mr. Cohn communicated to you that he wanted his  
7 settlement, his money to be used for the benefit of his family?

8 A Yes, sir.

9 Q Okay. And so he knew he had it and they knew he had it,  
10 right?

11 A Well, not to put too fine a line on this but he didn't  
12 have it. Lakesha had it in the bank at that point in time. He  
13 did not have it and couldn't get at it.

14 Q But he communicated to you to have an account opened up in  
15 Lakesha's name, correct?

16 A Yes. In fact, I was the one who suggested to him that he  
17 do that and that's what we did. You're correct, sir.

18 Q And Government's Exhibit No. 2 there before you, there was  
19 an opening check and I don't know if you see it in there in the  
20 amount of \$500?

21 A Give me just a second here. Yes. Yes, I do see it.

22 Q Is that from your business account or your trust account?

23 A This one, this is my business account, not my trust  
24 account. Because it's Country Club Bank. Yeah, I think that's  
25 my business account.

1 Q What does the notation say on that \$500 check?

2 A Lakesha bank account.

3 Q It says bank account?

4 A My writing is so horrible you could probably call it  
5 anything but that's my best judgment what it says.

6 Q Then the \$140,000 check I think is written a little bit  
7 later?

8 A Yes.

9 Q Is that your handwriting? It says, Cohn settlement?

10 A It is. All of it is my handwriting, yes, sir.

11 Q Now, at the time this account was opened, it was August of  
12 '07, is that correct?

13 A That's what the documents say. I'm sure that's correct,  
14 yes.

15 Q And you were aware that Mr. Cohn had been charged in March  
16 of '07 with multiple counts of bank fraud?

17 A Yes, generally.

18 Q You were aware that he had been in custody for three or  
19 four months by the time of August of '07?

20 A Yes.

21 Q And have you done much, even though you characterize  
22 Mr. O'Connor as the criminal attorney, have you done any  
23 criminal cases yourself?

24 A A long, long time ago, back in the 60s. As a young  
25 lawyer, if you were doing trial work, you got a lot of

1 appointments. So I got appointments for the first three or  
2 four years until the Public Defender and Federal Defender came  
3 into vogue and then I didn't have to do it. So I haven't  
4 handled a criminal case in probably 35 or 40 years.

5 Q If you have questions, you certainly have someone who is  
6 experienced? Mr. O'Connor?

7 A Certainly.

8 Q I'm not trying to be too rudimentary here or anything but  
9 in fraud cases and bank fraud cases, it's generally anticipated  
10 that restitution could be ordered somewhere down the road,  
11 right? Assuming somebody pleads or is found guilty of bank  
12 fraud, that is taking somebody else's money or whatever, it's  
13 not atypical in criminal cases for restitution to be ordered.  
14 Is that a fair statement?

15 A It probably is. I don't know.

16 Q Okay. All right. Well, you were aware then that Mr. Cohn  
17 did eventually plead guilty in this criminal case?

18 A I am aware of that, yes, sir.

19 Q And he actually pled guilty, I believe, to four, maybe  
20 five, I forget, counts of bank fraud, correct?

21 A Yeah. The only recollection I have of it is just exactly  
22 that, an issue of whether or not they were going to be able to  
23 keep the house and that was going to be in dispute. It was  
24 something that I think at one time even you and I talked about  
25 by phone.



1 Q Okay. Were you aware that as a result of that plea that a  
2 presentence investigation report was being prepared?

3 A Well, I don't know whether I was but I certainly would  
4 expect that's what would happen.

5 Q At any time did Mr. Cohn and or Mr. O'Connor contact you  
6 for information about the Lakesha McLaughlin bank account to  
7 provide to probation?

8 A No.

9 Q And had they asked, would you have given them that?

10 A Well, sure. He's the client. I'll give him anything he  
11 wants of his records.

12 Q Did you ever call myself or Detective Panuco and say, hey,  
13 we took the \$150,000 that Cohn got in the civil settlement and  
14 opened up an account for Lakesha McLaughlin. Did you ever  
15 communicate that to us?

16 A I think she knew it but I don't remember if I communicated  
17 it or not. I don't really know.

18 Q Well, you would agree however that that money, as you  
19 indicated in your direct testimony, was, the understanding was  
20 it was for the living expenses of significant others. Is that  
21 a fair statement?

22 A Yes, that was part of what it was for. Certainly.

23 Q And something that Mr. Cohn directed you to disburse  
24 specifically for the care and maintenance, economically, of his  
25 family?

1 A Actually what I did is, I went to visit with him in the  
2 jail down in Butler. Talked about it. I said, this is what  
3 you ought to do. He agreed. I said, who would be the most  
4 responsible to do that? We both agreed Lakesha McLaughlin, one  
5 of the gals living in the house. How they would use the funds,  
6 I didn't get into it.

7 Q Did you know while out on bond, briefly, he was able to  
8 access those funds himself and withdraw money? Were you aware  
9 of that?

10 A If they had a debit card and I don't know whether they  
11 would. He wouldn't have been able to write a check but he  
12 certainly could have gotten it other ways, I suppose.

13 Q All right. I have no further questions.

14 THE COURT: Redirect?

15 MR. O'CONNOR: None.

16 THE COURT: Just a couple of questions, Mr. Waldeck.

17 THE WITNESS: Yes, sir.

18 THE COURT: The only person that you represented was  
19 Dan, Ringling Dan Cohn, is that true?

20 THE WITNESS: It is, Your Honor.

21 THE COURT: Do you recall the total value of  
22 Mr. Coombs' probated estate?

23 THE WITNESS: It would have been just whatever there  
24 was for the car plus what could have been put in for the  
25 settlement, I guess, Your Honor.

1           THE COURT: Is it your recollection that the art  
2 gallery gave you all the money that was in the Coombs estate?

3           THE WITNESS: Oh, no, they did not. I'm sorry. I  
4 misunderstood.

5           THE COURT: That's my question.

6           THE WITNESS: They did not.

7           THE COURT: I want to know how much was in the estate  
8 versus how much was given to Mr. Cohn?

9           THE WITNESS: If we could start back. I'm sorry. I  
10 misunderstood. The account, the estate was suppose to have a  
11 value in excess of \$2 million. I believe it was ultimately  
12 determined it did not have that value. Then there were some  
13 specific requests, not of, I would assume would be more than a  
14 million dollars and less than two, sir.

15           THE COURT: I'm puzzled, Mr. Waldeck, by your  
16 testimony that the check representing Mr. Cohn's money and  
17 money for the benefit of his family was written on your  
18 business account. Generally, there is a rule against  
19 commingling a client's money with your own. I take it that  
20 that happened in this case?

21           THE WITNESS: Well, it appears to be a business kind  
22 of check. And I can't explain it any other way. I had a trust  
23 account at that time but I think the check was written on the  
24 business account. And I don't know why that was, Your Honor.

25           THE COURT: Well, notwithstanding the fact that it

1 was written on the business account rather than the trust  
2 account, there was never any question in your mind or in the  
3 mind of Mr. Cohn or his family that the money was theirs?

4 THE WITNESS: Absolutely.

5 THE COURT: Thank you.

6 Anything further?

7 MR. O'CONNOR: No, Judge.

8 MR. WARNER: No, Your Honor.

9 THE COURT: Thank you, Mr. Waldeck. You're excused.

10 (Witness excused.)

11 MR. O'CONNOR: That's all the witnesses I have, Your  
12 Honor.

13 THE COURT: This is not a complicated issue but if  
14 you want to make some brief argument in support of your  
15 respective positions, this would be the time to do that.

16 Mr. Warner?

17 MR. WARNER: Your Honor, concerning the issues before  
18 the Court, I would rest on the evidence.

19 THE COURT: Mr. O'Connor?

20 MR. O'CONNOR: If I may speak, please?

21 Judge, I'm going to just talk about the two issues  
22 that we're dealing with here and not reinvent the wheel here as  
23 relates to earlier agreement with the government which I know  
24 the Court was well aware of.

25 I'm going to first address the issues with Mr. Cohn's

1 back. There was no question in my mind or in Mr. Waldeck's  
2 mind when we went in front of Judge Larsen that there were  
3 serious issues with Mr. Cohn's back. It was evident to me in  
4 all my meetings with him and I even had questions with the  
5 marshals when he was at Bates because part of their thinking  
6 was that he was faking. I said to them, I'm not sure if he is  
7 or isn't. We were trying to get him out of there and get him  
8 somewhere else because they really didn't have any facilities  
9 to really treat anybody. I was open to the idea he could be  
10 faking. In fact, the first couple times that was in the back  
11 of my mind. But the more times I visited him, the more times I  
12 was around him, it became more and more evident to me.

13           It was my understanding and full belief that when he  
14 was released by Judge Larsen that he was going to seek  
15 treatment. In fact, I even called him as a result of me  
16 finding out through people from the courthouse when in fact he  
17 got out, he got out of his wheelchair and walked into a car. I  
18 said, that's a matter of time before something like that gets  
19 back to Judge Larsen. I called him on the phone. Said, look,  
20 you need to go see a doctor. You need to go get an evaluation  
21 because you may be back in front of Judge Larsen next week. If  
22 this gets back to Larsen, I don't know if that's true what  
23 happened. That was told to me like third hand. At that time  
24 my client told me he did not have an insurance card. Could not  
25 go do that, an identification which had been on his arrest.

1 Told him to make arrangements to do that. Obviously, he didn't  
2 do that. That, I'm sorry. He didn't do that.

3 But that does not take away from my sincere and  
4 honest belief there are issues. I still think there's issues  
5 with his back. Do they rise to the level of which they were  
6 portrayed? In terms of what was later observed of him?  
7 Obviously, there is some evidence to the contrary.

8 I can tell you that all this talk about him coming in  
9 a wheelchair, he has been in a wheelchair. And I think the  
10 marshals will attest, the reason they bring him in a wheelchair  
11 is that they can't give a cane because that can be a weapon.  
12 Can't give him a walker because that can be a weapon. So can  
13 he walk now without the wheelchair? Yeah. That's not the  
14 impression I'm trying to give you, that he's here in a  
15 wheelchair because he can't walk. He's here in a wheelchair  
16 because that's the only way the facilities have of bringing  
17 someone who otherwise needs assistance to get where they're  
18 going because they don't give them these other instruments  
19 because they're instruments that can be used against the guards  
20 or maybe even the attorney.

21 So this is not a misnomer when I have seen him in the  
22 wheelchair, doesn't mean he didn't need a wheelchair. He just  
23 needed assistance from where he was.

24 And I can tell you on one occasion when he was in  
25 Bates, they literally, took two guards to get him into the

1 wheelchair, to get him back, to take him back up after a short  
2 meeting with Mr. Waldeck and I, because he was in so much pain.  
3 And at that time there had been no discussion, Judge, none,  
4 about him getting out of jail. In fact, there's never been any  
5 discussion about him ever getting out of jail. You can count  
6 on one hand in 18 years the number of times I've had a client  
7 detained, who got out before or after a plea. Probably less  
8 than five. So that's a rare occasion. That only came up at  
9 the very end, when I was trying to secure a plea agreement and  
10 trying to convince Mr. Warner that he does need care. And I  
11 think this will also help us effectuate a plea in this case.  
12 Doesn't take away from the client being guilty. He wasn't  
13 pleading because he was going to get out. But it sure helped  
14 in terms of his mind getting the case revolved. So that was  
15 part of the discussion. So that's that argument.

16 As relates to these assets, and I don't want to  
17 understate this, overstate it or understate it. I think it's a  
18 tempest in a teapot. The government was aware of the  
19 settlement. There was never any secret about the settlement.  
20 The, in fact, some of the negotiations about this case,  
21 settlement of this case, there were discussions of the  
22 settlement. If the government would have said to me, hey, we  
23 need to have these numbers to spark the settlement, it would  
24 have been a given. For me to get the 34-month sentence, to do  
25 whatever it was going to take. We were getting a substantial

1 break in this case in light of the evidence.

2           So I just think that even though this form was not  
3 filled out properly, there is no argument about that. The  
4 question is did the government have the information? Were the  
5 assets available? And if the Court wanted to order restitution  
6 or whatever was going to happen as related to that information,  
7 everybody had it. Just a matter of who had it and when they  
8 had it. I think Ms. Richart testified she had it at the point  
9 that he was taken back into custody.

10           So I think the argument is somewhat false in that,  
11 although they needed this information, they had it or had  
12 access to it at any point in time. And so when it comes back  
13 to the adjustment because you go from a plea or a deal that you  
14 believe you have of 34 months to now this being void. And I  
15 understand the government's argument. Based on their argument,  
16 they have a right to say what they're saying. I'm not saying  
17 they don't.

18           I'm just saying, in light of the parties agreements  
19 that now we're, basically, now punishing the defendant on  
20 information we had access to or could have known. Or trying to  
21 use that now as a weapon against him. And I do believe that  
22 although he did not seek the medical care, that, obviously, be  
23 tempered in the sentence the Court deems appropriate. That  
24 maybe would not honor the agreement of the parties. But I  
25 don't think it's much more than that. And that's what I say to



1 the Court.

2 I think my client would like to say something before  
3 you sentence him. Is that where we're going next?

4 THE COURT: We're going to determine the appropriate  
5 guideline range and I'll hear any comments you want to make in  
6 support of whatever sentencing recommendation you wish to make.  
7 And, of course, Mr. Cohn will be given the opportunity to speak  
8 before sentence is imposed.

9 MR. O'CONNOR: Thank you, Your Honor.

10 THE COURT: My conclusion is Mr. Cohn did obstruct  
11 justice in this case. I do not doubt that he has back pain. I  
12 do think that he has overrepresented to this Court the amount  
13 of back pain that he actually is experiencing. And I think  
14 that is supported by the fact that the only medication,  
15 according to his daughter, that he is taking is ibuprofen.

16 Further, it is belied by the fact that he did not  
17 make an effort to see an orthopedic or neurosurgeon during  
18 that period of time this Court released him so he could do  
19 that. That alone I don't think is sufficient to support the  
20 obstruction enhancement.

21 However, when it is overlaid on the failure to reveal  
22 significant assets to this Court, in what is now identified as  
23 Government's Exhibit 1, suggests that he was attempting to  
24 manipulate the system for his own benefit. Regardless of whose  
25 name was on the account, the money was Mr. Cohn's. He was the

1 only party to the lawsuit. If he chose to use it for the  
2 benefit of his common law wife and common law step-children, he  
3 can certainly do that. But it was his money. And he knew that  
4 it was his money. And he knew he had access to that money at  
5 the time he filled out the financial statement requested by the  
6 probation office and he failed to reveal it. I conclude that  
7 he failed to reveal it because he didn't want to put it at risk  
8 of being forfeited or being subject to an order of restitution  
9 in this case. I think that is a very significant and material  
10 misrepresentation and one that justifies the two-level  
11 enhancement for obstruction.

12           It is a rare case in which an obstruction enhancement  
13 is awarded and credit for acceptance of responsibility is also  
14 awarded. I don't think that this is that kind of unusual case.  
15 And so the 3-level reduction for acceptance of responsibility  
16 will not be given to Mr. Cohn.

17           Additionally, because I find that he has violated the  
18 plea agreement, specifically Paragraph 19 of the plea  
19 agreement, I find that the government is not bound to the  
20 amount of the loss agreed to in the plea agreement. It is  
21 undisputed really that the amount of the loss in this case is  
22 the sum which is at least \$640,820.28. Because the amount of  
23 the loss exceeds \$600,000, instead of a ten-level increase  
24 agreed to in the plea agreement, I find that an appropriate  
25 increase would be 14, pursuant to 2B1.1B1H of the sentencing

1 guidelines.

2 With those changes Mr. Cohn's total offense level is  
3 now 25, his criminal history category is 4.

4 The United States Sentencing Guidelines would advise  
5 a sentence of imprisonment between 84 and 105 months.

6 In addition to considering the guideline range, I am,  
7 of course, required to consider the factors in 18 USC 3553(a)  
8 and will do so. However the attorneys may wish to address some  
9 or all of those factors in their remarks concerning an  
10 appropriate sentence.

11 Mr. O'Connor, I'll give you first swing here.

12 MR. O'CONNOR: Judge, obviously, the decision of the  
13 Court is, we're sorry the Court has made those findings, I  
14 understand from the evidence the Court has. I'm just going to  
15 take you back to the obvious agreement before this was a  
16 34-month sentence which the government believed was appropriate  
17 under the circumstances and now that has changed. Now, we're  
18 at a potential 84-month sentence.

19 And since the guidelines are advisory and the Court  
20 has discretion, I would just ask the Court to use that  
21 discretion and temper the sentence that you're going to give  
22 with the agreement that the parties had and now where we are,  
23 even if you doubled the 35. In other words, if he was going to  
24 be punished twice, you would be at 68 months at a low and I  
25 think even anticipated plea on this case without the agreement

1 of the parties would have been something less than 45 months.  
2 I think it was. 46 months.

3 The Court has made its finding as to these issues and  
4 so I would just ask the Court to temper a sentence in this case  
5 that somewhat takes into account the agreement that was reached  
6 and somewhat takes into account the Court believes the  
7 defendant deserves of the conduct while out on bond.

8 I guess I've never somewhat understood this  
9 acceptance of responsibility in a lot of ways because when  
10 someone pleads guilty and takes the chance of going to jail and  
11 admits to what they've done. I understand that if obstruction  
12 comes, that you get the two points. But when you get the extra  
13 added, that's taken away. There's never been a change from the  
14 plea or admission of what he did. There's never been a change  
15 as relates to his acceptance of his conduct. So I would ask  
16 the Court to consider, although you made that finding as to  
17 those 3 points, you would consider that also in determining  
18 what you believe the sentence is appropriate in this case.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Warner?

22 MR. WARNER: Your Honor, in several in camera  
23 discussions we've all had concerning this case, the government  
24 had communicated to the Court that given the circumstances, the  
25 changed circumstances that have occurred between the time of

1 the defendant's plea and certainly now, sentencing, the  
2 government was not going to take a specific position on  
3 sentencing but allow the Court to determine a reasonable  
4 sentence. And I would stand by that position.

5 I'm not wanting, again, to open up any more  
6 discussion, if the Court feels satisfied in its guideline  
7 calculations. I do know on Pages 13 and 14 some additional  
8 enhancements that were recommended by the presentence report  
9 that are undisputed. That would effect the ultimate offense  
10 level. I would just point that out which does indicate an  
11 offense level of 31 as opposed to 25. Other than that, Your  
12 Honor, that's all I have.

13 THE COURT: All right. Thank you.

14 Let me just respond to that, Mr. Warner, before I  
15 hear from Mr. Cohn. Mr. O'Connor correctly stated earlier that  
16 it is normally this Court's practice to accept the agreements  
17 of parties. And there is an overriding reason for that. That  
18 is that it encourages parties to get together and work out  
19 their differences. And if we had to try every case which comes  
20 into this court, we simply could not do it. We would be  
21 overwhelmed by the number of cases. And so it's important in  
22 the overall administration of justice that agreed resolutions  
23 be encouraged.

24 And it was for that reason that when the parties came  
25 to me prior to Mr. Cohn's plea of guilty that I indicated a

1 willingness to accept the parties agreement with respect to the  
2 sentencing range, which we thought applied at that time.

3           Likewise, I met with counsel before we came into  
4 court today. And Mr. Cohn authorized his attorney,  
5 Mr. O'Connor, to withdraw all of his objections to the  
6 presentence report except those relating to obstruction and  
7 acceptance of responsibility. And in the course of that  
8 conversation I did a preliminary guideline calculation that  
9 resulted in a total offense level of 25 and criminal history  
10 category of four. I believe that is what we were talking  
11 about. I believe that that in part was why Mr. Cohn withdrew  
12 his other objections to the presentence report. And so that is  
13 the guideline range which I find applies to this case and those  
14 are the reasons why I make that finding.

15           Mr. Cohn, I'm going to allow you to speak from the  
16 seated position if you would like to do that. If you want to  
17 approach the lectern, you're certainly welcome to do that.  
18 Whatever is most comfortable.

19           Mr. O'Connor, would you direct the microphone down,  
20 please?

21           DEFENDANT COHN: To tell you the truth, Your Honor,  
22 I'm at a loss for words. But I'm not going to dispute your  
23 ruling. There's no need in going over everything involved in  
24 you making your ruling. I'm not going to dispute anything.

25           Further, all I would ask is that I want you to know

1 that I take full responsibility for what I have done. I've  
2 never shirked that responsibility. I take accounting for my  
3 actions.

4 That being said, I have a family and loved ones, too.  
5 They have suffered greatly because of this. Some of it brought  
6 on by me, some of it not. I want very much to be back with my  
7 family. You saw how protective my daughter can be of me. I  
8 just ask to give me a chance for a fair sentence, sir.

9 Thank you.

10 THE COURT: I'm required to consider the guideline  
11 range calculated under the sentencing guidelines of 84 to 105  
12 months of imprisonment. Further, I'm required to consider the  
13 factors in 18 USC 3553(a) and impose a sentence which is  
14 sufficient but not greater than necessary to comply with the  
15 purposes of that statute, considering the nature and  
16 circumstances of the offense and the history and  
17 characteristics of the defendant.

18 This is not, in my view, a typical bank fraud case.  
19 There are, I've seen many, many bank fraud cases where there  
20 was an abuse of trust. But I don't believe that I have seen  
21 one where the trust was abused as egregiously as I see the ones  
22 in this case. Mr. Cohn accepted the responsibility, perhaps  
23 sought, but at least accepted the responsibility of caring for  
24 Mr. Coombs. Paragraph 39 of the presentence report recites  
25 that on September 13, 2005, the Jackson County Division of

1 Aging contacted Mr. Coombs at Cohn's residence. Mr. Coombs was  
2 located in the basement of the residence wearing an old knit  
3 shirt and a diaper. He was covered with an old dirty blanket.  
4 Mr. Coombs was extremely dehydrated and confused. He was  
5 unable to leave the room as he was bedridden. He did not have  
6 access to a telephone. The basement bathroom was filthy and  
7 unusable. He was removed from the residence and died twelve  
8 days later at the age of 87 of natural causes.

9 A subsequent search of the residence revealed new  
10 furniture in almost every room of the home, two large screen  
11 television sets, new silverware, new accessories and numerous  
12 photographs of the Cohn family which had been taken and framed  
13 professionally.

14 Mr. Cohn was under no obligation to care for  
15 Mr. Coombs. But having voluntarily undertaken that obligation,  
16 he failed in almost every respect to meet the standard of care  
17 that one would ordinarily expect and insist upon in the care of  
18 an aging and infirmed individual.

19 Aside from considering the nature and circumstances  
20 of the offense, I'm required to consider the history and  
21 characteristics of the defendant. Beginning at Page 14 of the  
22 presentence report and carrying through Page 17 of the  
23 presentence report are Mr. Cohn's prior criminal convictions.  
24 At age 19, three counts of stealing. At age 20, stealing by  
25 force and assault. At age 23, auto theft. Age 34, armed



1 robbery, involving the use of a knife. Age 41, in Paragraph  
2 68, harassment. Age 44, simple assault. Age 44, destruction  
3 of property. Age 47, attempted stealing two counts and  
4 stealing, and then two driving convictions. In addition  
5 there's a pending charge of theft of poker chips from a black  
6 jack table at Harrah's.

7           Then there are two pages of other arrests which did  
8 not result in convictions. All of which suggest that Mr. Cohn  
9 has little respect for the law and the requirements of the law  
10 or that he is unable to conduct himself in a fashion in which  
11 he complies with the law.

12           In addition to the stealing charges, the armed  
13 robbery and stealing by force and assault charges cause me to  
14 believe that Mr. Cohn has a violent nature. And may well  
15 represent a serious threat to the public.

16           The sentence I impose should be one that reflects the  
17 seriousness of the offense. We've talked about that. One  
18 which promotes respect for the law and constitutes just  
19 punishment. It should be one that affords an adequate  
20 deterrence to criminal conduct and that doesn't mean just to  
21 deter Mr. Cohn. That means to deter others who may view these  
22 proceedings and to alert them that there are serious  
23 consequences for the type of conduct engaged in by Mr. Cohn.

24           It should protect the public from further crimes of  
25 the defendant. A lengthy period of imprisonment in my view is

1 necessary to accomplish that objective of protecting the  
2 public.

3           It should take into account the kinds of sentences  
4 available and avoid unwarranted sentence disparities between  
5 this defendant and other defendants who have been convicted of  
6 the same or similar offense, occupying the same or similar  
7 criminal history background. A sentence within the guideline  
8 range would, I believe, avoid unwarranted sentence disparities.

9           The question then becomes where within that guideline  
10 range. It is uncommon for this Court to view a defendant  
11 preliminary to sentencing and be unable to articulate any  
12 redemptive qualities. This is an uncommon case.

13           Mr. Cohn, I despise the conduct that you engaged in,  
14 in this case. And it's very difficult for me to get past my  
15 sense of moral outrage and try to arrive at a sentence which is  
16 reasonable and one that is arrived at dispassionately. But I  
17 will try to do that.

18           Pursuant to the Sentencing Reform Act of 1984, it is  
19 the judgment of this Court that the defendant, Ringling Dan  
20 Cohn, is hereby committed to the custody of the Bureau of  
21 Prisons to be imprisoned for 96 months on each of Counts 3, 6,  
22 10 and 12 to be served concurrently.

23           Upon release he will be on supervised release for 5  
24 years on each of the counts of conviction. Those terms to be  
25 served concurrently.

1 I find that in light of the restitution obligation  
2 Mr. Cohn lacks the ability to pay a fine. The fine will be  
3 waived.

4 I impose special assessments totaling \$400 which is  
5 due and payable to the United States immediately.

6 On Counts 3, 6, 10 and 12, restitution in the amount  
7 of \$640,820.28 is imposed. That amount is due in a lump sum  
8 and due and payable immediately. If Mr. Cohn is unable to pay  
9 that amount immediately, he'll be permitted to make payments of  
10 at least 10 percent of his earnings while incarcerated and at  
11 least 10 percent of his gross income or \$150.00, whichever is  
12 greater while on supervision.

13 Restitution shall be paid for the benefit of the  
14 Nelson Art Gallery Foundation at the attention of Curtis Woods,  
15 Esquire, at the address reflected in the presentence report.

16 While restitution is owed Mr. Cohn will be required  
17 to notify the United States Attorney of any change of address  
18 and both the United States Attorney and this Court if there is  
19 a material change in his economic circumstances. Interest on  
20 the restitution obligation is waived.

21 While on supervised release Mr. Cohn will have to  
22 comply with the mandatory standard conditions of supervised  
23 release adopted by this Court and the following special  
24 conditions. He must pay any restitution balance within the  
25 first 54 months of supervision on a schedule set by this Court.

1 He must provide the probation office with access to any  
2 requested financial information. He'll be prohibited from  
3 opening new lines of credit or obtaining credit charges without  
4 the approval of the probation office, while restitution is  
5 owed.

6 He'll be required to submit his person, his  
7 residence, his office or his vehicle to a search conducted by a  
8 U.S. Probation Officer at a reasonable time, in a reasonable  
9 manner, based upon a reasonable suspicion of contraband or some  
10 evidence of a violation of a condition of his supervised  
11 release. Failure to submit will be grounds for revocation.  
12 And other residents of the premises should be warned that the  
13 defendant's premises may be subject to searches pursuant to  
14 this condition.

15 He'll be required to satisfy any outstanding warrants  
16 or pending charges within the first 90 days of his supervised  
17 release. He'll be prohibited from entering any gambling  
18 establishment or engaging in any kind of gambling including  
19 offshore or Internet gambling. He will not be employed in any  
20 vocation in which he will act in a fiduciary capacity.

21 Mr. Cohn is remanded to custody for service of the  
22 sentence imposed.

23 Mr. Cohn, you have the right to appeal both the  
24 finding of guilt and the sentence I have imposed in this case.  
25 With few exceptions any notice of appeal must be filed within

1 ten days. If you are unable to pay the cost of an appeal, you  
2 can apply for leave to appeal as a poor person. If you ask,  
3 the Clerk of the Court will prepare and file a notice of appeal  
4 on your behalf. If you do not ask, that will not happen.

5 Your plea agreement limits your right to appeal.  
6 That limitation is found in Paragraph 15. The Court of Appeals  
7 has generally enforced those limitations. However if you  
8 believe that yours should not be enforced, you can present that  
9 argument to that court. Do you understand that?

10 DEFENDANT COHN: Yes, sir.

11 THE COURT: Mr. O'Connor, anything further?

12 MR. O'CONNOR: No, Judge.

13 THE COURT: Mr. Warner?

14 MR. WARNER: No, Your Honor.

15 THE COURT: All right. We're adjourned.

16 \* \* \*

17 CERTIFICATE

18 I certify that the foregoing is a correct transcript from the  
19 record of proceedings in the above-entitled matter.

20  
21 12/7/2008

/s/ Cynthia M. Johnson